SUPREME COURT OF THE UNITED STATES.

No. 264.

WILLIAM E. CLARK, APPELLANT,

vs.

JOHN GEORGE KILLIAN, ADMINISTRATOR, &C., OF WILLIAM SCHLORB, DECEASED, MARY MARGARET SCHLORB, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Bill of review.—Filed Jan. 4, 1877.*

In the supreme court of the District of Columbia, holding an equity court for said District.

JOHN GEORGE KILLIAN, ADMINISTRATOR DE bonis non of Wm. Schlorb, deceased, Mary Margaret Schlorb, Emma Schlorb, Whelimina Schlorb, Kate Schlorb, George L. Schlorb, and John Schlorb, complainants,
vs.
WILLIAM E. CLARK, DEFENDANT.
} No. 5322. In equity.

The bill of review of the above-named complainants, praying a review of two (2) decrees signed and enrolled in this cause of the above-named defendant, William E. Clark, as complainant against John George Killian et al., the above-named, complainants as defendants, being equity cause No. 3877, docket No. 13, of the supreme court of the Dist. of Columbia.

2 To the honorable the justices of the supreme court of the District of Columbia:

Your complainants, humbly complaining, show and represent unto your honors as follows:

1st. That your complainants and the defendant in this bill of review are residents and citizens of the District of Columbia.

2d. That said co-complainant, Mary Margaret Schlorb, widow of William Schlorb, deceased, sues in her own right, and said co-complainant, Emma Schlorb being over the age of twenty years, sues in her own right, and that said co complainants, Kate Schlorb, Whelimina, otherwise called Menie Schlorb, George L. Schlorb, and John Schlorb, infant children of said William Schlorb, deceased, and said Margaret Schlorb, sue, through their mother and next friend, Mary Margaret Schlorb, and said co-complainant John George Killian sues as administrator de bonis non of the estate of said William Schlorb, deceased.

3 3d. Your complainants further show unto your honors that on the *the* 11th day of August, A. D. 1874, William E. Clark (the above-named defendant) exhibited his bill of complaint in your honorable court against your complainants, and thereby set forth as follows:

In the supreme court of the District of Columbia.

WILLIAM E. CLARK
vs.
JOHN GEORGE KILLIAN, ADMINISTRATOR DE bonis non of Wm. Schlorb, Mary Margaret Schlorb, Emma Schlorb, Menie Schlorb, Kate Schlorb, George L. Schlorb, John Schlorb.
} In equity. No. 3877.

The bill of complaint of Wm. E. Clark respectfully represents:

1st. That all the parties to this suit are residents of this District, and all the parties defendant are sued in their own right, except John George Killian, who is sued as administrator de bonis non of Wm. Schlorb, late of this District, deceased, who was appointed as such by this court

4 on the death of John Killian (hereinafter named), adm'r of Wm. Schlorb. The said Mary Margaret Schlorb is said to be the

wife of said Wm. Schlorb, and the other defendants are the minor children of said Margaret and William.

2nd. That on or before the 18th day of August, 1858, the said Wm. Schlorb was seized as in fee-simple of lots 6 and 9, in square 654, and was the owner of certain goods and chattels then in a building standing upon one of said lots, and the said real and personal property constituted all of his estate at that time. And being so seized & possessed on the said 18th of August, 1858, he executed a deed conveying all of the same to John Killian, since deceased, in trust for the use of said Mary Margaret, and providing among other things that the same shall not be liable for the debts of said Wm. Schlorb, and that in the event of the death of said Margaret, leaving said William surviving him, then the trustee to hold said trust property to and for the use and
5 benefit of said William during the term of his natural life, &c.; all of which will more fully appear by a copy of said deed duly recorded in liber J. A. S. No. 159, folio 303 et seq., of the land records of said District, to which record reference is hereby made, and it is prayed that the same may be taken as part of this bill; and this complainant is advised that the said conveyance was a fraud upon the creditors of the said William Schlorb & is null & void.

3d. That on or before the 23rd of October, 1858, the said William Schlorb purchased of one John B. Kibby lots Nos. 5 & 8, in square No. 654, in the city of Washington, D. C., and paid for them with his own means, and, with the purpose and design to hinder, delay, and defraud his creditors, directed the said Kibby to convey the same to said Killian in trust for the sole & separate use of said Margaret Schlorb, free
6 from any liability for the debts of said Wm. Schlorb, and the said William and Margaret joined with said Kibby in executing said deed; all of which will more fully appear by said deed duly awarded in Liber J. A. S. No. 159, folio 413 et seq. of the land records of said District, and it is prayed that said record may be taken as part of this bill.

4th. That on or before the 23rd of December, 1868, the said Wm. Schlorb was seized as in fee-simple of lot No. 1 in square 654, in the city of Washington, D. C., and being so seized on the said 23rd day of December, 1868, with the intent to hinder, delay & defraud his creditors, the said William executed a deed, conveying the said lot 1 in said square 654, together with certain goods and chattels described in a schedule annexed to said deed, to the said Killian in trust for the sole and separate use of the said Margaret, free from all liability for the debts of said William, & free from his control, or that of any of his creditors,
7 all of which will more fully appear by said deed duly recorded in Liber D No. 4, ff. 421 et seq., one of the land records of this District, and it is prayed that said record may be taken as part of this bill.

5th. That on or before the 5th day of October, 1865, the said Wm. Schlorb purchased of one Henry J. Baker lot 2 in sq. 654, in the city of Washington, D. C., and with a view to hinder, delay & defraud his creditors, had the same conveyed to his infant son George L. Schlorb then of very tender years, and the complainant is informed and believes that the whole consideration for said lot was paid by said Wm. Schlorb. Reference is here made to the record of said deed in Liber R. M. H. No. 4, ff. 236 et seq., and it is prayed that said record may be taken as a part hereof.

6th. That on or before December 21, 1865, the said Wm. Schlorb
8 purchased of one Thomas B. Brown lot 3, in sq. 654, in the city

of Washington, D. C., and, with the design to hinder, delay & defraud his creditors, had the same conveyed to said John Killian in trust for the sole and separate use of said Margaret Schlorb, free from the control of her husband, and this complainant is informed and believes that the entire consideration for said lot was paid by the said Wm. Schlorb out of his own means. Reference is here made to the record of said deed in Liber R. M. H. No. 14 of the land records of this district, and it is paayed that said record may be taken as part hereof.

7th. That on or before May 3d, 1866, the said Wm. Schlorb purchased of one Amos P. Budle the north half of lot 7 in sq. 654 in the city of Washington, D. C., and, with the design to hin', to delay, and defraud his creditors, had the same conveyed to said John Killian in trust for the sole and separate use of said Margaret Schlorb free
9 from the control of her husband. And this complainant is informed and believes that the entire consideration for said lot was paid by said Wm. Schlorb out of his own means. Reference is here made to the record of said deed in Liber R. M. H. No. 15, ff. 347, &c., of the land records of this district, & it is prayed that said record may be taken as part of this bill.

8th. And this complainant is informed and believes, & so charges, that the said William Schlorb was not, subsequent to the said 18th day of August, 1858, the owner of any real estate in said District of Columbia, other than those pieces mentioned in the several deeds hereinbefore referred to, and that by the said deeds the said Schlorb conveyed away to his wife and infant son all of his property, real, personal, & mixed, while at the same time, and continuously up to the time of his
10 death, the said Schlorb continued to carry on his *on his* business as a butcher.

9th. That on the 22d day of November, 1865, the said William Schlorb commenced dealing with this complainant, and being largely indebted to him, this complainant, suit was commenced on the law side of this court, in cause No. 5805. And on the 26th day of June, 1873, a judgment was rendered in favor of this complainant for $3,819$\frac{25}{100}$ and costs, against John Killian, ad'r of Wm. Schlorb, who had previously died, as will more fully appear by the records of said cause, to which reference is here made as a part of this bill.

10th. That on the day of , 1874, a fi. fa. was duly issued out of this court, which was returned to the marshal of the District "nulla bona."

11th. This complainant is advised that the several transfers of property hereinbefore set forth to the wife and infant son of said Schlorb were fraudulent and void as to him and the other creditors of
11 said Schlorb.

In view of the facts hereinbefore set forth, this complainant prays:

1st. That the parties defendant to the bill be served with process.

2d. That the several deeds to John Killian, trustee, and to George L. Schlorb be declared null and void, so far as they effect the interest of this complainant or the other creditors of said William Schlorb.

3d. That a trustee be appointed by this court to sell so much of the property of the said William Schlorb as may be necessary to pay the judgment in favor of this complainant and all the necessary expenses of this suit.

4th. And for such other and further relief as to the court may seem meet.

WILLIAM E. CLARK,
FRANCIS MILLER,
Sol's for Compl't.

12 I, William E. Clark, do solemnly swear that I have heard the above bill read and know the contents thereof, and that the statements therein contained, as of my own knowledge are true, and those on information & belief I believe to be true.

WILLIAM E. CLARK.

Subscribed and sworn to before me this 11th of August, 1874.
R. J. MEIGS, *Clerk*,
By S. P. WILLIAMS, *Ass't.*

13 4th. Your complainants pray leave to read, refer to, and make part of this bill of review the said bill of complaint of said defendant, William E. Clark, if need be.

5th. Your complainants further show that said complainants being served with process of subpœna to appear and answer said bill of complaint of said William E. Clark, for that purpose appeared and put in their answers, that is to say, that said co-complainant Mary Margaret Schlorb (by and through her then solicitor, E. C. Carrington, esq.,) made answer to the following effect:

"In the supreme court of the District of Columbia, this 21st day of August, A. D. 1874.

WILLIAM E. CLARK *vs.* JOHN G. KILLIAN ET AL. } Equity. No. 3877.

14 The answer of the defendant Mary M. Schlorb, one of the defendants in the above-entitled cause, to the bill of complaint of the above-named plaintiff.

This defendant, saving and reserving to herself all benefit which may be had by way of exceptions to the said bill of complaint, or otherwise, for answer thereto or to so much thereof as this defendant is advised it is material or necessary to make answer, answering, saith:

1. She admits that the parties to this cause, plaintiff and defendants, are residents of Washington City, District of Columbia; but indignantly repels the insinuation in said bill made that she was not the lawfully wedded wife of William Schlorb, deceased, late of said city and District, but on the contrary states that she was duly united with said Schlorb in the holy bonds of matrimony on or about the 18 day of November, A. D. 1851, and that the infant defendants in this cause are the offsprings of said marriage, born in lawful wedlock.

15 2. Further answering, defendant denies every and each of the allegations in said bill charging fraud upon herself or her said deceased husband in reference to the transfer of the property in the bill mentioned and particularly described, on the contrary she states and charges the fact to be that the transfer of the greater portion of said property was made and completed in the year 1858, about eight years before any dealings took place between the defendant's deceased husband and the plaintiff, and at a time when her husband was free from debt, in comfortable circumstances and engaged in a prosperous business,

and that the only piece of property transferred in trust for her by said Wm. Schlorb, deceased, was one lot in the year 1868, after the dealings between him and the plaintiff had commenced and were in progress. And defendant charges the fact to be that at the time of the transfer of said last mentioned piece of property, upon a settlement of ac-
16 counts between her husband and the plaintiff no balance would have been found against him, the indebtedness forming the basis of said bill having arisen some time subsequent to said transfer and very shortly before the death of her said husband.

3d. In reference to lot 2, in square 654, referred to in said bill, conveyed by one H. J. Baker to George L. Schlorb, the infant son of defendant and said William, deceased, and charged to have been purchased with the money of said William, defendant charges and alleges the fact to be that said transaction was made and completed at least a year before the dealings aforesaid commenced, and that the plaintiff could not therefore have trusted her husband on account of said lot, the same never having been in his name upon the land records.

4th. And defendant, answering generally, says that all the property referred to in said bill, with the single exception of one lot, having
17 been transferred to a trustee for the benefit of defendant many years before the transactions between plaintiff and defendant's deceased husband commenced, no credit could have been given her husband on that account, and said transaction could in no way have contributed to the creation of the indebtedness in said bill mentioned, and in relation to the allegation in said bill that said transactions were a fraud upon other creditors of her deceased husband, defendant says that the same is false, inasmuch as her husband was at that time free from debts and conducting a prosperous business.

5. And, further answering, defendant says that a large portion of the purchase money of the property described in the bill was paid by her, being the result of her own individual labor and executions, and apart from anything received from her husband; and this and other facts herein set forth she is ready and willing to prove in such manner
18 and at such time as the court may appoint.

6. And defendant further says that she is now a poor widow, having five children, all of them young, unable to do anything to assist her, and dependant entirely upon her for support, maintenance, and education; and that the property which the plaintiff in his bill seeks to render liable for the judgment against her husband is all that she has to assist her in providing the plainest food, and hardly any other of the necessaries of life; and to subject her individual property to the payment of her husband's debts would be to expose herself and helpless children to danger of starvation, and would be unjust, inequitable, and against good conscience. And she further states that said property is situated just east of the arsenal, on the Island, and in the midst of a number of brick-yards, a portion of the city where there are no im-
19 provements, and property is of very little value, and that said property, if offered for sale at public auction, would not bring enough to satisfy said judgment, and, therefore, nothing would be left for herself and children.

7. And defendant denies the justice and legality of the indebtedness claim to be due from her husband to the plaintiff, and alleges that the judgment therein mentioned was unlawfully obtained, and that the same is improper, irregular, and oppressive.

8. And as tending to show that the transfer of property above referred to were made in good faith, and with no intention or disposition

to defraud creditors, defendant states that the plaintiff is the only person who claims a debt to be *one* from her said husband; and having fully answered as she is advised, she prays to be hence dismissed with her reasonable costs in this behalf most unjustly expended.

M. MARGARET SCHLORB.

20 I do solemnly swear that I have heard read the answer by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief I believe to be true.

M. MARGARET SCHLORB.

Subscribed and sworn to before me the 21st day of August, A. D. 1874.

CHARLES WALTER, *J. P.*

6th. Your complainants further show that in said cause of William E. Clark against your complainants your honorable court, on the 14th day of October, 1874, on motion of said defendants Clark's solicitor, passed an order appointing said co-complainant Mary Margaret Schlorb guardian ad litem of said co-complainants Emma, Kate, Menie,
21 George, and John Schlorb for the purposes of said suit, as will more fully appear, reference being had to said order filed in said cause, and recorded in minutes S, page 240, of your honorable court, which your complainants pray leave to read, refer to, and make part hereof if need be.

6½. That said co-complainant Mary M. Schlorb was appointed guardian of defendants Emma, Menie, Kate, George L., and John Schlorb, although said Emma, Menie, Kate, George, & John Schlorb were not in court, and although said Emma, Menie, & Kate were above the age of fourteen years, and said George & John above the age of four years.

7. Your complainants further show that the said co-complainant, Mary Margaret Schlorb, as said guardian ad litem, on oath, filed an answer to said bill of said William E. Clarke on behalf of said co-complainants Emma, Whelimina (otherwise called Menie), Kate, George, and John Schlorb to the following effect, to wit, that they being
22 infants under twenty-one years of age, that they, as defendants in said bill of said Clark could not admit any of the matters and things alleged in the said bill, and being infants of tender years submit their rights to the protection of the court, as will fully appear by said answer filed in said court, which your complainants pray leave to read, refer to, and make part hereof, if need be.

8. Your complainants further show that said co-complainant John George Killian, on the 21st day of August, 1874, filed his answer (duly sworn to by said Killian before the clerks of your honorable court) in said cause of said Clark against your complainants to the following effect:

In the first paragraph of his said answer said co-complainant says: "The residence of the parties to this cause, as alleged in the bill, are admitted;" and in the second (2) paragraph of hissaid answer he says:
"The defendant admits that he was appointed and is now the ad-
23 ministrator de bonis non of the estate of Wm. Schlorb, deceased, having succeeded his brother, John Killian, who acted in that capacity until his death, which occurred several months ago." And in the third paragraph of his said answer, he, the defendant, knows nothing in relation to the property and real estate which was held in trust by his deceased brother for the benefit of his co-defendant Mary M.

Schlorb, except the fact of the deeds so conveying the property being duly rendered among the land records of the District of Columbia. And he further says that at the time of the transfers of said real estate that he, of his own personal knowledge, knows that the said William Schlorb, deceased, was engaged in a prosperous business—was entirely responsible—and that said deeds were not made with any intent or design to defraud any of his creditors, much less the plaintiff, with whom at
24 that time he had not commenced to deal. And further, he says that he is satisfied that a large portion of the purchase-money paid for said property was contributed by said Mary M. Schlorb as the result of her own earnings and savings, as will more fully appear by reference to said answer filed in said equity cause of said Clark against these complainants, which your complainants pray leave to now refer to and make part hereof, if need be.

9th. Your complainants further show that on the 12th day of October, A. D. 1874, the said defendant, William E. Clark, filed his joinder of issue on your complainant's said answers to his said bill.

10th. Your complainant further shows that although issue was joined on said bill and answers no witnesses were examined; and that on the day of , 1874, said defendant Clark, by his said solicitor,
25 let the said cause for hearing on his said bill and answers of your complainants, and the same was heard by your honorable court on or about the 17th day of February, A. D. 1875, when a decree was pronounced by your honorable court, which was afterwards passed and entered, in which it is set forth and recited as follows, to wit:

"This cause coming on to be heard on bill, answers, & application was argued by counsel and in consideration thereof it is this 17 day of February, 1875, ordered, adjudged, and decreed that the conveyances of lots one (1) and (3) and the north ½ of lot seven (7) to John Killian, in trust for Mary Margaret Schlorb, mentioned in paragraphs 4, 6, and 7, of plaintiff's bill be, and the same are hereby, declared to be null and void, and Francis Miller is hereby appointed as trustee to sell the said lots to the payment of the judgment of plaintiff set forth in said
26 bill, after paying the costs of this suit and the costs of the sale.

"The trustee before proceeding to sell the said lots shall file in the clerk's office a bond to be approved by the court in the sum of $2,000, for the faithful performance of his duties as trustee. The terms of sale shall be one-third cash and the remainder in two equal payments at six and twelve months.

"It is further ordered that the property be advertised in the Evening Star twice a week for three weeks before said sale.

"And as to the conveyances other lots mentioned in said bill, it is ordered that no further proceedings be had until the coming in of the trustee's report of sale, all equities between the parties as to the said lots being reserved until the coming in of said report."

11. Your complainants are informed and believe, and, so believing, charge and aver that said Francis Miller, under and by virtue
27 of said decree on the 6th day of April, 1875, sold said lots 1, 3, and north half (½) of lot 7 to said defendant, William E. Clark, for $1,403 47/100, as will appear by the report of said Francis Miller, trustee, filed in said cause on the 17th day April, 1875, which your complainants pray leave to read, refer to, and make part hereof, if need be, which said sale was ratified by your honorable court.

12. Your complainants further show that afterwards, on the 18th day

of June, 1875, your honorable court pronounced and passed a second (2) decree in said cause to the following effect, to wit:

"This cause coming on to be further heard, and it appearing from the report of the trustee hereinbefore appointed to make sale of a portion of the real estate described in the bill of complaint herein, that the proceeds of said sale were insufficient to pay the judgment
28 against the estate of Wm. Schlorb, deceased, upon further consideration it is this 18th day of June, 1875, ordered, adjudged, and decreed, that the conveyances of lots five (5), six (6), eight (8) and nine (9), in square No. 654, to John Killian, in trust for the use of Mary Margaret Schlorb, wife of William Schlorb, land the conveyance of lot two (2), in said square 654, to George L. Schlorb, be, and the same are hereby, declared to be null and void. It is further ordered, adjudged, and decreed, that Francis Miller is hereby appointed trustee to sell the said lots, to wit, lots two (2), five (5), six (6), eight (8), and nine (9), in square 654, to satisfy the judgment mentioned in the bill of complaint herein. It is further ordered that the said trustee before proceeding to sell said lots shall file in the clerk's office of this court a bond, to be approved by the court,
29 in the sum of $3,000, for the faithful performance of his duties as trustee, and that the terms of said sale shall be as follows: one third of the purchase money shall be paid in cash, and the remainder thereof in two equal instalments in six and twelve months, the deferred payments to be secured by deed of trust on the property; a deposit of $50 on each lot shall be made on the day of the sale. It is further ordered that the lots before mentioned be advertised for sale in the Evening Star twice a week for three weeks before the day of said sale," which said decree is made part hereof if need be.

13th. Your complainants further show they are informed and believe that on the 27th day of July, A. D. 1875, Messrs. Carrington & Carrington, solicitors of your complainants as defendants in said cause, came into court and moved the court to vacate and set aside the decree passed in said cause, for the reasons set forth in the annexed Exhibit A, as
30 part hereof, the same being a true copy of the motion, reasons, and affidavits of said Carrington & Carrington in said cause, which your complainants pray leave to read, refer to, and make part hereof, on hearing of which motion your complainants are informed and believe your honorable court overruled the same, on the ground that the same was not in proper form; and if any errors existed in said decrees, the same could be remedied by a bill of review.

14th. Your complainants further show and allege that both of said decrees have been signed and enrolled, and your complainants humbly insist that they are erroneous and ought to be reviewed, reversed, and set aside for many apparent errors and imperfections.

15th. Your complainants show and allege that said decree of the 17th day of February, A. D. 1875, for the sale of said lots one (1),
31 three (3), and the north half (n. ½) seven (7) is erroneous because—

1st. It is shown in said answer made by said co-complainant, Mary Margaret Schlorb, defendant in said cause, that when said lots 1, 3, and north part of 7 were conveyed, as in said deeds mentioned, on a fair accounting between said defendant Clark and the said William Schlorb, no balance would have been found against said William Schlorb in favor said defendant Clark.

2d. It was shown in said answer, and not denied by said Clark, tha the indebtedness forming the basis of said judgment had *answer* subse

quent to said conveyance of said lots, and very shortly before the death of said William Schlorb.

3d. It is shown by said answer of said Mary Margaret Schlorb that at the time of the conveyance of said lots 1, 3, and north half of 7 that said defendant Clark could not have based his transactions with
32 said William Schlorb on the ground that said William Schlorb was the owner of said lots, as it is clearly shown that at the time of said conveyances the said William Schlorb was then engaged in a prosperous and remunerative business, and that such conveyances or deeds were not made, or cause' to be made, with any fraudulent intent what were made as a reasonable provisions for said complainant, Margaret Schlorb, and the said children.

4th. It is also shown by record of said suit at law of said defendant, William E. Clark, against said William Schlorb (which said William E. Clark makes a part of his said bill of complaint against your complainants) that said William Schlorb commenced to deal with said William E. Clark on the 22 day of November, 1865, and ended on the 22 day of October, 1868, during which time, to wit, two years and eleven months, the almost daily business transactions between said Clark &
33 William Schlorb was between $275 to $1,600 or $1,700, and during said time or period amounted to $99,502$\frac{83}{100}$, as will appear by reference to Exhibit X$\frac{1}{2}$, filed in said suit at law, a copy of which is made part hereof; and it further appears by said Clark's bill of complaint that said judgment was recorded only for $3,819.25, thereby showing that during said period of two years and eleven months said William Schlorb had accounted and paid said Clark $95,683.$\frac{83}{100}$.

5th. It is also shown by said record at law (which is made part of said defendant Clark's bill of complaint) that said defendant Clark instituted his said suit at law against said William Schlorb on 12 day of May, 1869. That said William Schlorb filed his pleas of non assumpsit, nil debit, and statute of limitations on the 1st day of June, 1869; that joinder of issue was filed on 3 June, 1869, and on the 12th June, 1871, said William Schlorb's death was suggested to the court, and on
34 the 13 December, 1871, John Killian, administrator of said William Schlorb, was made a party to said suit, and on the 26 June, 1873, judgment on verdict of the jury was rendered in favor of said Clark for said $3,819.$\frac{75}{100}$.

16th. Your complainants show & humbly insist that said second decree, dated the 18th day of June, 1875, ordering a sale of lots 2, 5, 6, 8, and 9 is erroneous and ought to be reviewed, reversed, and set aside on account of the errors and imperfections, because complainants show—

1st. That at the time of the conveyance of said lots 2, 5, 6, 8, and 9, there was no (as shown by the said answer of said co-complainant, Mary Margaret Schlorb, as defendant in said cause, and also as shown by said defendant, William E. Clark, his said bill of complaint) business transactions between him, said Schlorb, and said William E. Clark.
35 That said deeds of conveyance were duly recorded in the land records of the District of Columbia many years prior to any business transactions between said Clark and Schlorb. That the real estate in said deeds of conveyance mentioned never was in the name of said William Schlorb at the time of said business transactions. That at the dates of said conveyances said William Schlorb was not indebted to said William E. Clark or to any other person.

2d. Further, it is shown that during the period or date of said deeds the said William Schlorb was doing a prosperous business, and that any subsequent transactions between said defendant Clark and said William

Schlorb could not have been based on said lots as to said William Schlorb being the owner.

3d. It is shown by the answers that said conveyances of said lots were not made with any fraudulent intent whatever.

36 4th. It is shown by the said bill of complaint of said defendant William E. Clark, that said lots 2, 5,6, 8, and 9 were conveyed to said John Killian as trustee, for the benefit of said co-complainant, Mary Margaret Schlorb, and said George L. Schlorb, previous to any transactions between said William Schlorb and said William E. Clark. And that said lots 5, 6, 8, and 9 were conveyed to said John Killian, as trustee, in the year A. D. 1858; and that the business transactions between said defendant Clark and said William Schlorb did not commence until 22 day of November, 1865, there being a period of nearly eight (8) years between the date of said conveyance of said lots and the recording of the same in the land records of the District of Columbia before the date of any business transactions between said William E. Clark and said William Schlorb.

37 5th. And complainants pray here to refer to and make part of this their 5th showing of error, paragraph No. *No.* 4 of section 15 of this their bill of review as if they here had repeated the same.

6th. It is also shown by said answers that said Mary Margaret Schlorb, by her own labor, paid a large portion of the purchase money for said lots in said cause mentioned, and your complainants allege that said answer of said Mary Margaret Schlorb is confined by the answer of said co-complainant, John George Killian, administrator de bonis non, filed in said equity cause, and hereinbefore set forth as part of this bill of review, which your complainants pray here to read, refer to, and make part hereof, if need be.

7th. That as to said lot No. 2 in said second (2) decree mentioned, it is now shown by said defendant Clarke's bill of complaint that said lot No. 2 was conveyed to said co-complainant, George L. Schlorb, by Henry

38 J. Baker, on the 5th day of October, 1865, and recorded nearly two (2) months before the commencement of any business transactions between said defendant, William E. Clark, and said William Schlorb, as will appear by said bill of complaint, and the proceedings at law therein referred to as part of *your* bill.

8th. It is alleged and shown in the answers filed in said equity cause that at the time of the conveyance of said lots 2, 5, 6, 8, and 9 the said William Schlorb had no creditors; nor does the said defendant Clark, in his said bill of complaint against these complainants, allege that there were other creditors, or that he knew said William Schlorb at that time. Nor is it shown that at the time of filing said bill of complaint there were any creditors except said Clark, who became a creditor nearly eight years after the conveyance of said lots 5, 6, 8, and 9, and recording thereof as aforesaid, and nearly two (2) months after date of conveyance of said lot 2, and the recording of said conveyance.

39 17th. Your complainants further show and allege they are informed and believe, and so believing humbly insist, that if the said William Schlorb was in no way indebted to said defendant, William E. Clark, at the time of said conveyances of said lots to said John Killian, as trustee, and to said George L. Schlorb, and did not become indebted until long subsequent to the making and recording of the said deeds of conveyances, that said William Schlorb had a right in law to make, or cause to be made (as a man of family, to provide for his wife and children), the conveyances for the benefit of Mary Margaret Schlorb, his wife, and his infant children of him, said William Schlorb,

and that a decree rendering such conveyance null and void would be erroneous; and further your complainants allege they are informed that if said William Schlorb were indebted to other persons at the
40 time of the conveyances of said lots, that a decree set aside said conveyances as a fraud upon subsequent creditors would be erroneous; and even if there were other creditors, a decree setting aside said conveyances in this cause would be erroneous, because said defendant, William E. Clark, or said answers, make no allegation whatever to other creditors, nor had any other claims been filed or established against said estate of said William Schlorb, nor has any attempt been made in said proceedings to show there were other creditors.

18th. Your complainants further show they are informed and believe, and so believing say, that a verified answer denying the allegations of the bill of complaint is in law a complete answer to said bill, and that it was an error in this honorable court to render either of said decrees, especially when said verified answer of said Mary Margaret
41 Schlorb is corroborated by the answer of this then co-defendant and now co-complainant, John George Killian, administrator de bonis non, and when it is partially shown by the said bill of complaint that the same is also true.

19th. Your complainants further show that said Francis Miller, trustee, by virtue of said second decree, on the 16th day of September, 1875, sold said lots 2, 5, 6, and 8, with improvements, to said defendant, William E. Clark, and said lots No. 9 to J. H. Richards, as will appear by said report of said trustee filed in said cause, which your complainants pray leave to read and refer to, and make part hereof, if need be yet.

20th. Your complainants further show that the said Francis Miller, as trustee, has conveyed said lots 2, 3, 5, 6, 8, 9, & north half of lot 7, in said square 654, to the said defendant, William E. Clark, as will appear by the annexed Exhibit B, made part hereof.

21st. Your complainants further show that the said defendant, William E. Clark, shows upon the face of his said bill of complaint
42 against your complainants that said lots 1, 3, 5, 6, 8, and 9, and part of lot 7, in said square 654, were conveyed to said John Killian, as trustee as aforesaid; and further shows in his said bill of complaint the said John Killian had departed this life long prior to the filing of his bill of complaint, yet the said defendant, William E. Clark, did not and has not made the heirs-at-law of said John Killian parties to the said bill of complaint, or proceedings in said equity cause, as the said John Killian, as your complainants believe, did institute and left the following named persons as his children and only heirs-at-law, to wit: Maggie Ball (formerly Killian), Kate Poetzman (formerly Killian), and John Killian, all residents of the city of Washington, District of Columbia.

22. Your complainants further show that the said defendant, William E. Clark, has given notice to the said co-complainant, Mary Mar-
43 garet Schlorb, to remove from and quit said lots 1, 2, 3, 5, 6, 8, 9, and part of 7, as will appear by the said annexed Exhibit B, which your complainant prays leave to read and make part hereof.

23. Your complainants further represent that the said defendant Clark has threatened said co-complainant, Mary Margaret Schlorb, that unless she and said co-complainant remove from and quit said lots at the end of thirty days from date of said notice, he will eject her and her children, meaning said co-complainants, from said lots.

The premises considered, your complainants pray as follows:

1st. That the said defendant, William E. Clark, may be made party defendant hereto.

2d. That the said deeds of conveyance to the said defendant, William E. Clark, be declared null and void, and thereby be cancelled.

44 3d. That said decree of the 17th day of February, 1875, be reviewed, reversed, and set aside.

4th. That said decree of the 18th of June, 1875, be reviewed, reversed, and set aside.

5th. That said equity suit of said William E. Clark against your complainants be reheard and reviewed by your honorable court.

6th. That the defendant, William E. Clark, his servants, agents, and attorney, may be restrained by order and injunction of your honorable court from ejecting and disturbing said complainant, Mary Margaret Schlorb, and said infant co-complainants, in the said lots.

7th. That all necessary accounts may be taken and enquiries made and directions given as to the transactions between said defend-

45 ant, William E. Clark, and said William Schlorb.

8th. That your complainants may have such other & further relief in the premises as the nature of the case may require.

To which end the complainants pray for process against said defendant, William E. Clark, requiring him to appear and answer the exigency of this bill of review.

The defendants to this bill of review are William E. Clark.

M. MARGARET SCHLORB.

her

EMMA × SCHLORB.

mark.

WM. JOHN MILLER,

Solicitor for Compl'ts.

Witnesses to mark of Emma Schlorb.

J. P. B. LANDS.

I, Mary Margaret Schlorb, do solemnly swear I have heard read the foregoing bill of complaint & know the contents thereof; that the facts therein stated upon my own knowledge are true, and those facts therein stated upon information and belief I believe the same to be true.

M. MARGARET SCHLORB.

46 Subscribed and sworn to before me this 3rd day of January, A. D. 1877.

L. CABELL WILLIAMSON, *J. P.*

Subpœna issued Jan. 4, '77.

In the supreme court of the District of Columbia, the 4 day of January, 1877.

Subpœna to answer.

MARY M. SCHLORB, ET AL., COMPL'T, *vs.* WILLIAM E. CLARK, DEF'T. } No. . Eq. Doc. 16.

The President of the U. S. to William E. Clark:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain

of attachment and such other process of contempt as the court shall award.

Witness D. K. Carter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Asst. Clerk.

MEMORANDUM.—That the deft. herewith served is to enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Sumn'd Jan'y 20, 1877.

ALEX. SHARP,
Marshal.

47 EXHIBIT A.

In the supreme court of the District of Columbia, this 27th day of July, A. D. 1875.

WILLIAM E. CLARK
vs.
JOHN G. KILLIAN, ET AL. } Equity. No. 3877.

And now come the defendants by their council and move the court to vacate and set aside the decree passed herein on the 18th day of June, A. D. 1875, for the reasons set forth in the following affidavit.

CARRINGTON & CARRINGTON,
Sols. for Defendants.

Edward C. Carrington and Irving Williamson, being duly sworn, depose and say: That we appeared as counsel for defendants before the equity court at the hearing of this cause, on or about the 17th of February last, and upon argument, his honor Justice Wylie expressed the opinion that the deeds for the benefit of the wife & children were void as far as the present creditors were concerned, but were good against future creditors to the extent of a reasonable allowance for the wife
48 and children, and the counsel for the defendants rested under the belief that the judge would adhere to this opinion, or if he was disposed to change the same, would hear argument. We took it for granted that case was disposed of and would not be further considered by the court, unless its special attention was called to it, and reasonable notice given to council on both sides. But the council for the complainant, after selling all the property which the court declared subject to sale, in the absence of council for defendants and without notice to them, reported the sale to the court, and obtained a decree to sell the whole of the remaining property, leaving nothing for the widow and children, and council for defendants respectfully submit that the judge who presides in the chancery court, in the multitude of business, may have forgotten what occurred in this cause, and gave a decree for the sale of the whole of the property as a matter of course, supposing that there was no objection to it. And council respectfully submit that said decree is unjust, illegal, and inequitable, & that they are at least entitled to a hearing, & that the widow and children should not be deprived of a home without the privilege of a hearing through their council in open court.

EDWARD C. CARRINGTON.
IRVING WILLIAMSON.

49 Subscribed and sworn to before me this 27th day of July, A. D. 1875.

HUGH T. HUGHES, *J. P.* [SEAL.]

EXHIBIT B.

This is to certify that as trustee appointed for that purpose by the supreme court of the District of Columbia, I sold on the 6 day of April, 1875, lots one, three, & the north-half of seven, in square 654, to Wm. E. Clark; and on the 15th day of September, 1876, I also, by the same authority, sold lots two, five, six, and eight, in square 654, to the said Wm. E. Clark. The said Clark has fully complied with the terms of sale, and I have executed deeds of said lots to him.

FRANCIS MILLER,
Trustee in Clark vs. Killian & others.

WASHINGTON, *Dec. 9th*, 1876.

WASHINGTON, D. C., *Dec. 11th*, 1876.

Mrs. MARGARET SCHLORB: As I am desirous to have & possess the tenement & premises situated on O street between first and half streets southwest, in the city of Washington, D. C., being lots in square 654, conveyed to me by Francis Miller, trustee as per certificate on the back hereof, I hereby give you notice to remove from and quit the same at the end of thirty days from the date hereof. Witness my hand and seal.

WILLIAM E. CLARK. [SEAL.]

(Indorsed:) 5322, Eq. 1½. Mary M. Schlorb et al. vs. William E. Clark et al. Exhibit A & B. Filed Jan. 4, 1877. R. J. Meigs.

50 *Demurrer.—Filed Feb. 22, 1877.*

In the supreme court of the District of Columbia.

SCHLORB ET AL. *vs.* WM. E. CLARK. } Equity. No. 5322.

The defendants says that the complainant's bill is bad in substance.

FRANCIS MILLER,
Sol's for Defendant.

I hereby certify that in my opinion the above demurrer is good in law.

FRANCIS MILLER,
Sol's for Defendant.

I, William E. Clark, defendant in the above-entitled cause, do solemnly swear that the above demurrer is not interposed for the purpose of delay.

WM. E. CLARK.

Subscribed & sworn to before me this 22nd day of February, 1877.

R. J. MEIGS, *Clerk*,
By L. R. WILLIAMS,
Ass't Clerk.

51 *Demurrer sustained & bill dismissed, Apr.* 12, 1877.

In the supreme court of the District of Columbia.

MARY M. SCHLORB
vs.
WILLIAM E. CLARK. } Equity. No. 5322.

This cause coming on to be heard on the bill and the demurrers thereto, on consideration thereof it is, this twelfth day of April, 1877, ordered, adjudged, and decreed that the said demurrer be, and it is hereby, sustained and the bill dismissed with costs.

From which decree the complainant appeals and the same is allowed. By the court.

(Indorsed:) Exhibts 4 & 5. Schlorb et al. vs. Clark.

52 *Leave to complainants to deposit $10 with clerk in lieu of bond.—Filed April* 24, 1877.

In the supreme court of the District of Columbia.

MARY M. SCHLORB
vs.
WILLIAM M. CLARK. } In equity. No. 5322.

The complainants having appealed from the decree of the equity court passed in this cause on the 12th day of April, A. D. 1877, it is, this 24th day of April, A. D. 1877, ordered that leave be, and is hereby, given to complainants to deposit with the clerk of the court the sum of ten dollars as costs of said appeal, to abide by and pay the judgment of the court on said appeal, instead of giving bond as security for costs.
By the court.

53 *Agreement as to exhibits.—Filed May* 18, 1877.

In the supreme court of the District of Columbia. Holding an equity court.

MARY M. SCHLORB
vs.
WILLIAM E. CLARK. } In equity. No. 5322.

It is hereby agreed between the complainants and defendant, by and through their representative solicitors, that the following papers, marked respectively Exhibits M. & M., Nos. 1, 2, 3, 4, 5, and 6, being the deeds mentioned in section three (3) of complainant's bill in this case, and also in sections 2, 3, 4, 5, and 6 of said defendant Clark's bill, referred to in this cause, may be used, referred to, and heard in evidence at the hearing of the above entitled cause, instead of the land records of the District of Columbia in said cause mentioned. And, further, said exhibits may be filed in said cause as if the same had been original filed as exhibits.

WM. JNO. MILLER,
FRANCIS MILLER,
Solicitor for Defendant.

54 EXHIBIT M. & M., No. 1.

This indenture, made this tenth day of August, in the year of our Lord one thousand eight hundred and fifty-eight, by and between William Schlorb, of the city of Washington, in the District of Columbia, of the first part, and John Killian, of the same place, of the second part, witnesseth:

That in consideration of the natural love and affection which the said William Schlorb hath and beareth towards his wife, Mary Margaret Schlorb, and for the further consideration of the sum of five dollars current money of the United States to him, the said William Schlorb, in hand paid by the said John Killian before the unsealing and delivery of these presents, the receipt thereof is hereby acknowledged, he, the said William Schlorb, hath given, granted, bargained, sold, assigned, transferred and set over, and by these presents doth give, grant, bargain, sell, assign, transfer and set over unto the said John Killian and his heirs, executors, administrator or assigns all those pieces, parcels of ground lying and being in the city of Washington, in the District of Columbia, and known and distinguished on the ground plate of said
55 city as lots numbered six and nine (6 & 9), in square numbered six hundred and fifty-four (654), and all the goods and chattels, household-stuff, furniture, kitchen utensils, and effects now in the building occupied by the said Wm. Schlorb & wife as dwelling and business establishments, situated on the above-mentioned lots No. 6 & 9, which said goods and chattels, household & kitchen furniture, & effects are particularly enumerated & described in the schedule hereunto annexed and made part of these presents, together with the buildings, improvements, rights, privileges, appurtenances, and other hereditaments to the same belonging: To have and to hold all and singular the said pieces of ground and goods & chattels to & unto the use of the said John Killian, his executors, administrators and assigns forever: Upon trust, nevertheless, to, for and upon the following uses, intents & purposes, that is to say: In trust to suffer and permit the said Mary Margaret, her appointees & assigns, to have, hold, occupy, use, possess and enjoy the
said pieces of grounds & goods & chattels, household stuff, furni-
56 ture, kitchen utensils, & effects to her sole and separate use, notwithstanding her present or any future husband she may happen to marry, & that the same shall not be in any manner subject to his control or liable for his debts. And in the event of the death of the said Mary Margaret Schlorb, leaving the said William Schlorb surviving her, then the trustee to hold said trust property to & for the use & benefit of the said Wm. Schlorb for and during the time of his natural life; and after the death of the said William Schlorb, the said trustee to *to* convey, release, & confirm the said trust property to the child or children of the said William Schlorb living at her death, share & share alike.

In testimony whereof the said William Schlorb hath hereunto set his hand and seal the day & year first above mentioned.

WM. SCHLORB. [SEAL.]

Signed, sealed, and delivered in presence of—
CHAS. WALTER.
P. MCKENNA.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

We, Chas. Walter and P. McKenna, justices of the peace in and
57 for the county aforesaid, do hereby certify that William Schlorb,

party to a certain deed bearing date on the tenth day of August, 1858, and hereunto annexed, personally appeared before us in our county aforesaid, the said William Schlorb being personally well known to us to be the person who executed the said deed, and acknowledged the same to be his act and deed. Given under our hands & seals this tenth day of August, 1858.

CHAS. WALTER, J. P. [SEAL.]
P. McKENNA J. P. [SEAL.]

Schedule: Two horses, two wagons, one old buggy, butcher apparatus, and the entire household & kitchen furniture.

WM. SCHLORB.

Witness:
CHAS. WALTER.

58 EXHIBIT M. & M., No. 2.

This indenture, made the twenty-third day of October, in the year of our Lord one thousand eight hundred and fifty-eight, between John B. Kibbey and Helen M., his wife, of the city of Washington, in the District of Columbia, of the first part, and William Schlorb and Margaretta, his wife, of the said city, of the second part, and John Killian, of the said city, of the third part, witnesseth:

That the said John B. Kibby and his said wife, and William Schlorb and his said wife, for and in consideration of the trusts hereinafter mentioned and declared, and for the sum of five dollars, in lawful money of the United States, to them in hand paid, and five hundred and ninety dollars to said Kibbey paid by the said John Killian, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, and enfeoffed, and conveyed, and do by these presents grant, bargain, sell, alien,
59 enfeoff, and convey, unto the said John Killian, his heirs and assigns, all those certain pieces or parcels of ground situate and lying in the said city of Washington, and being known and described as lots numbered five (5) and eight (8), in square numbered six hundred and fifty-four (654), as the same are laid down on the public plan of said city, together with all the improvements, ways, alleys, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity, or otherwise however, of the said parties of the first and second parts, or any of them, of, in, to, or out of the said pieces or parcels of ground, or either of them; to have and to hold the said pieces or parcels of ground and premises and appurtenances unto and to the use of the said John Killian, his heirs and assigns, in and upon the trusts nevertheless hereinafter mentioned and declared, and for no other
60 use, trust, or *or* purpose whatsoever, that is, in trust for the sole use and benefit of the said Margaretta Schlorb, the wife of the said William Schlorb, free of all liability for and control by her said husband and his debts and contracts and obligations, or any future husband and his debts and obligations. And to permit the said Margaretta Schlorp to use and occupy the said pieces or parcels of ground and premises & appurtenances, and the rents, issues, & profits thereof, to take, have, and apply to and for her sole use and benefit.

And upon this further trust, at any time or times hereafter, upon the written request and direction of said Margaretta Schlorp, notwith-

standing her present or future coverture, to make and execute all such deed or deeds, deeds of trust, mortgages, and leases, to convey the said pieces or parcels of ground, or either of them, or any part thereof, absolutely in fee simple, in trust, by way of mortgage, or for any time or term, to such person or persons, and for such uses and purposes,
61 as the said Margaretta Schlorp shall or may request and direct as aforesaid, and such investment or other proper disposition of the proceeds of any such sale or sales so made as aforesaid to make as the said Margaretta Schlorp shall or may in writing request and direct as aforesaid. And after the decease of said Margaretta Schlorp, to convey the said pieces or parcels of ground and premises, or such parts or portions thereof or such right or estate therein as shall not have been otherwise previously disposed of, unto such person or persons, in such manner and for such uses and purposes as the said Margaretta Schlorp shall have devised or directed by last will and testament or other instrument of writing in the nature of a last will and testament, duly witnessed and proven as such, notwithstanding her present or any future coverture. And after the decease of said Margaretta Schlorp, to convey the said pieces or
62 parcels of ground and premises, or such part or portion thereof, or such right or estate therein, as shall not have been previously disposed of by deed or will or otherwise in manner as aforesaid, unto the heirs at law of said Margaretta Schlorp in fee simple.

And the said John B. Kibbey, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said John Killian, his heirs and assigns, in the manner following, that is, that he, the said John B. Kibbey and his heirs shall and will warrant and forever defend the said pieces or parcels of ground and premises unto the said John Killian, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, by, from, under, or through the said John B. Kibbey and his heirs, or any of them.

And, further, that he, the said John B. Kiddey, and his heirs, shall and will at any time hereafter, upon the request and at the cost
3 of the said John Killian, as trustee, his heirs and assigns, make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said pieces or parcels of ground and premises unto the said John Killian, as trustee, his heirs and assigns, as the said John Killian, his heirs or assigns, or his or their counsel, learned in the law, shall advise, devise, or require.

In testimony whereof the said parties of the first and second parts have hereunto set their hands and seals on the day and year first hereinbefore written.

JNO. B. KIBBEY. [SEAL.]
HELEN M. KIBBEY. [SEAL.]
WM. SCHLORP. [SEAL.]
MARGARETTA SCHLORP. [SEAL.]

64 Signed, sealed, and delivered in the presence of (the interlineation of words "and five hundred and ninety dollars to said Kibbey paid," on the first page hereof, being first made)—

THOMAS C. DONN.
F. J. MURPHY.

DISTRICT OF COLUMBIA,
County of Washington, sct:

We, Thomas C. Donn and F. J. Murphy, two justices of the peace in

and for the county of Washington aforesaid, in said District, do hereby certify that John B. Kibbey and Helen M., his wife, and William Schlorp and Margaretta, his wife, parties to a certain deed bearing date on the twenty-third day of October, A. D. 1858, and hereunto annexed, personally appeared before us in our said county, the said John B. Kibbey and Helen M. Kibbey, his wife, and William Schlorp and Margaretta Schlorp, his wife, being personally well known to us as the persons who executed the said deed, and the said John B. Kibbey and William
65 Schlorp acknowledged the same to be their act and deed; and the said Helen M. Kibbey and Margaretta Schlorp being by us examined privily and apart from their said husbands, and having the said contents of said deed fully explained to them, they acknowledged the same to be their act and deed, and they declared that they had willingly signed, sealed, and delivered the same, and that they wished not to retract it.

Given under our hands and seals this twenty-fifth day of October, A. D. 1858.

THOMAS C. DONN, *J. P.* [SEAL.]
F. J. MURPHY, *J. P.* [SEAL.]

66 EXHIBITS M & M, No. 3.

This indenture made this twenty-third day of December, in the year of our Lord, one thousand eight hundred and sixty-eight, between William Schlorb, of the first part, John Killian, of the second part, & Margaretta Schlorp, of the third part, all of Washington, District of Columbia, witnesseth:

That for and in consideration of the love and affection the said William Schlorb bears for the said Margaretta Schlorb, his wife, and for and in consideration of the sum of five dollars, current money, to him in hand paid by the said John Killian, at and before the sealing and delivering of these presents, the receipt of which he, the said William Schlorp, doth hereby acknowledge, he the said William Schlorp hath given, granted, bargained, sold, enfeoffed, and confirmed, and by these presents doth give, grant, bargain, sell infeoff, and confirm unto the said John Killian, his heirs, and assigns all that piece of ground lying,
67 and being in the city of Washington, District of Columbia, and known and described as lot numbered one (1), in square six hundred and fifty-four (654), as the same is laid down upon the plat or ground plan of said city of Washington, together with all and singular, the buildings, improvements, rights, privileges, and appurtenances to the same belonging, and also all the goods and chattels, described below in schedule marked A.

To have and hold the said herein described lot and premises, with the appurtenances to the same belonging, and also the below described goods and chattels, unto the said John Killian, his heirs & assigns, for the uses, purposes, benefit, and behoof of the said Margaretta Schlorb, the wife of t[illegible] said William Schlorb, her heirs and assigns forever, with full power and authority that the said John Killian, his heirs and assigns, at the request of the said Margaretta Schlorb, her heirs and assigns, shall sell, dispose of, convey, enfeoff, lease, rent, or bar-
68 ter the said premises and goods for the sole use, benefit and behoof of the said Margaretta Schlorb, her heirs and assigns, without the control of the said William Schlorb, as his heirs, and free from his debts, and from his control and that of any of his creditors, and to

and for the only proper use, benefit, and behoof of the said Margaretta Schlorb, her heirs and assigns forever.

In witness whereof the said William Schlorb hath hereunto set his hand and seal the day and year first above given.

WM. SCHLORB. [SEAL.]

Witnessed by—
LOUIS SCHADE.

69 Schedule A.

1. Butcher stall No. 1 (number one), in the old Center Market.
2. Butcher stall No. 3 (number three), in the Navy Yard Market, both in the city of Washington.
3. Bacon and salt meat, whatever there may be, and also the butcher business, including apparatus, implements and stock, now on the premises, owned by John Killian, in trust for Margaretta Schlorb, and by George Leonhardt Schlorb, comprising several lots in square six hundred and fifty-four (654), in the city of Washington, District of Columbia.

WM. SCHLORB.

Witnessed by—
LOUIS SCHADE.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Louis Schade, a notary public in and for said county and District, do hereby certify that William Schlorb, party to a certain deed, bearing date the twenty-third day of December, eighteen hundred and
70 sixty-eight, and hereto annexed, personally appeared before me, in my county aforesaid, the said William Schlorb being personally known to me to be the person who executed the said deed and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-third day of December, 1868.

LOUIS SCHADE,
Notary Public.

71 EXHIBITS M & M, No. 4.

This indenture made this fifth day of October in the year of our Lord one thousand eight hundred and sixty-five, between Henry Joseph Baker and his wife, Anne B. Baker, of the District of Columbia, of the one part, and George Leonard Schlorb, of the same place, of the other part, witnesseth:

That the said parties of the first part for and in consideration of the sum of four hundred dollars current money of the United States to them in hand paid at or before the sealing and delivery of these presents by the said George L. Schlorb, the receipt of which is hereby acknowledged, have given, granted, bargained, and sold, enfeoffed, conveyed, released, and confirmed, and by these presents do give, grant, bargain, and sell, enfeoff, convey, release, and confirm unto the said George Leonard Schlorb, his heirs and assigns forever, all that lot of ground and premises situate and lying in said city of Washington, D. C.,
72 and known upon the public plat thereof as and being lot numbered two (2) in square numbered six hundred and fifty-four (654).

Together with the buildings, improvements, rights, privileges, appurtenances and hereditaments to the same belonging or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof, and all the right, title, and interest and estate of them, the said parties of the first part, in and to the same.

To have and to hold the said piece of ground and premises with the appurtenances unto him, the said George L. Schlorb, his heirs and assigns forever to and their sole use and benefit and behoof forever. And the said parties of the first part for themselves, their heirs, executors and administrators, by these presents covenants, promises, and agrees to and with the said George L. Schlorb, his heirs and assigns, in manner following, to wit: That they, the said parties of the first
73 part, and their heirs, shall & will warrant & forever defend *defend* the said piece or parcel of ground and premises with the appurtenances hereby bargained and sold unto him, the said George L. Schlorb, his heirs and assigns from and against them, the said parties of of the first part, their heirs and assigns, and all persons claiming or who may claim by, under, or through them or any of them.

And further that they, the said parties of the first part, and their heirs shall and will at any time and all times hereafter at the request and cost of the said George L. Schlorb, his heirs and assigns, make and execute any every other deed of assurance in law for the more sure and effectual conveyance of the said piece or parcel of ground and premises with the appurtenances to the said George L. Schlorb, his heirs and assigns, that the said George L. Schlorb, his heirs or assigns, or his or their counsel learned in the law, shall or may devise, advise, or require.

In testimony whereof the said parties of the first part have
74 hereunto set their hands & affixed their seals the day and year first hereinbefore written.

H. J. BAKER. [SEAL.]

Signed, sealed & delivered in the presence of—
CHAS. L. WALTER.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Chas. Walter, a notary public, duly appointed in & for the county of Washington, in the District of Columbia, do hereby certify that Henry Joseph Baker, party to a certain deed bearing date on the fifth day of October, A. D. 1865, and hereunto annexed, personally appeared before me in my county aforesaid, the said Henry Joseph Baker, being personally well known to me as the person who executed the said deed, and Henry J. Baker acknowledged the same to be his act & deed.

Given under my hand and official seal this day of October, A. D. 1865.

CHAS. WALTER,
Notary Public.

75 DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Charles Walter, a notary public, duly appointed, in and for the county of Washington, in the District of Columbia, do hereby certify that Anne B. Baker, wife of Henry Joseph Baker, a party to a certain deed bearing date on the fifth day of October, A. D. 1865, and hereto annexed, personally appeared before me, in my county aforesaid, the said Anne B. Baker, being personally well-known to me as the person

who executed the said deed and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, she, the said Anne B. Baker, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this day of October, A. D. 1865.

CHAS. WALTER,
Notary Public, D. C.

76 EXHIBITS M & M, No. 5.

This indenture made this twenty-first day of December, in the year of our Lord one thousand eight hundred and sixty five, by and between Thomas Brown and his wife, Mary A. Brown, of the city of Washington, in the District of Columbia, of the first part, & John Killian, of the same place, of the second part, witnesseth:

That the said parties of the first part, for, and in consideration of, the sum of two hundred ninety-seven dollars and fifty-five cents, current money of the United States, to them in hand paid by Margaret Schlorb, wife of William Schlorb, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, enfeoffed, conveyed, released, and confirmed, and by these presents do give, grant, bargain, sell, enfeoff, convey, release, and confirm unto the said John Killian, his heirs
77 & assigns forever, the following piece or parcel of ground lying and being in the city of Washington, in the District of Columbia, and known as all of lot numbered three (3), in square numbered six hundred and fifty-four (654), together with all the rights, privileges, appurtenances, and other hereditaments to the same belonging or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof, and all the right, title, interest, and estate of the said parties of the first part in and to the same.

To have and to hold the said described ground and premises with the appurtenances unto him, the said John Killian, his heirs and assigns forever. In trust, nevertheless, for the sole and separate and exclusive use, benefit, and behoof of the hereinbefore-mentioned Margaret Schlorb, free from the control of the present or any future hus-
78 band; she may have the power at any time to sell and dispose of said premises in fee simple, or of any lesser estate by deed or will to be executed or acknowledged by her as though she were a femme seule, and the said party of the second part and his heirs to convey the same according to direction and appointment in such deed or will and in default of disposition or appointment on the death of said Margaret Schlorb the trustee to convey the same to the legal heirs of the said Margaret Schlorb.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year hereinbefore written.

THOMAS B. BROWN. [SEAL.]
her
MARY A. + BROWN. [SEAL.]
mark.

Signed, sealed, & delivered in the presence of—
CHAS. WALTER.

79 DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Charles Walter, notary public, duly appointed in and for the county of Washington, in the District of Columbia, do certify that Thomas B. Brown executed a certain deed, bearing date on the 21st day of December, A. D. 1865, and hereunto annexed, personally appeared before me in my county aforesaid the said Thomas B. Brown, being personally well known to me as the person who executed the said deed, and acknowledged the same to be his act & deed.

Given under my hand & official seal this 21st day of December, A. D. 1865.

CHARLES WALTER,
Notary Public.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Charles Walter, a notary public, duly appointed in & for the county of Washington, in the Dist. of Columbia, do hereby certify that Mary A. Brown, wife of Thomas B. Brown, a party to a certain deed bearing date on the twenty-first day of December, A. D. 1865, & hereto annexed, personally appeared before me in my county aforesaid the said Mary A. Brown, being personally well known to me as the per-
80 son who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, she, the said Mary A. Brown, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 21st day of December, A. D. 1865.

CHARLES WALTER,
Notary Public.

81 EXHIBITS M & M, No. 6.

This indenture, made this third day of May, in the year of our Lord one thousand eight hundred and sixty-six, by and between Amos P. Beadle and his wife, Cecilia Beadle, of the city of Washington, in the District of Columbia, of the first part, and John Killian, of the same place, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one hundred and ninety dollars, current money of the United States, to them in hand paid by Margaret Schlorb, wife of William Schlorb, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, enfeoffed, conveyed, released, and confirmed, and by these presents do give, grant, bargain, sell, enfeoff, convey, release, and confirm unto the said John Killian, his heirs and assigns forever,
82 the following piece or parcel of ground situate, lying, and being in the city of Washington, in the District of Columbia, and known and described as the north half of lot numbered seven (7), in square numbered six hundred and fifty-four (654), as will more fully appear by reference to the plat or plan of said square on file in the surveyor's office of the said city of Washington, together with all the rights, privileges, appurtenances, and other hereditaments to the same belonging,

or in any manner appertaining, and the remainder, reversions, rents, issues, and profits thereof, and all the right, title, interest, and estate of the said parties of the first part, in and to the same.

To have and to hold the said described ground and premises, with the appurtenances unto him, the said John Killian, his heirs & assigns forever. In trust nevertheless for the sole and separate and exclusive use, benefit, and behoof of the hereinbefore-mentioned Mar-
83 garet Schlorb, free from the control of her present or any future husband; she may have the power at any time to sell and dispose of said premises in fee simple, or of any lesser estate by deed or will, to be executed and acknowledged by her as though she were femme seule; and the said party of the second part and his heirs to convey the same according to direction and appointment in such deed or will, and in default of disposition or appointment on the death of said Margaret Schlorb, the trustee to convey the same to the legal heirs of the said Margaret Schlorb.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year hereinbefore written.

AMOS BEADLE. [SEAL.]
CECILIA M. BEADLE. [SEAL.]

Signed, sealed, & delivered in the presence of—
CHARLES WALTER.

84 DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Charles Walter, a notary public, duly appointed in and for the county of Washington, in the District of Columbia, do hereby certify that Amos P. Beadle , part' to a certain deed bearing date on the third day of May, A. D. 1866, and hereunto annexed, personally appeared before me, in my county aforesaid, the said Amos P. Beadle being personally well known to me as the person who executed the said deed, and Amos P. Beadle acknowledged the same to be his act and deed.

Given under my hand and official seal this third day of May, A. D. 1866.

CHARLES WALTER,
Notary Public.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Charles Walter, a notary public duly appointed in and for
85 the county of Washington, in the District of Columbia, do hereby certify that Cecilia Beadle, wife of Amos P. Beadle, a party to a certain deed, bearing date on the third day of May, A. D. 1866, and hereto annexed, personally appeared before me in my county aforesaid, the said Cecilia Beadle being personally well known to me as the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, she, the said Cecilia Beedle, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal the third day of May, A. D. 1866.

CHAS. WALTER,
Notary Public.

86 *Decree in gen. term.—Filed May* 20, 1878.

In the supreme court of the District of Columbia, in general term, A. D. 1878.

MARGARET SCHLORB ET AL. *vs.* WILLIAM E. CLARK. } In equity. No. 5322.

This cause came on to be heard on the appeal from the special term of this court holding an equity, and the same having been argued by counsel and duly submitted to and counseled by the court, it is, this 20th day of May, A. D. 1878, by the court ordered and adjudged and decreed that the decree of the said equity court dismissing the said bill of complaint in this cause be and the same is hereby reversed, and further it is ordered, adjudged, and decreed that the demurrer of said defendant be and the same is hereby overruled; and the said cause having been also submitted on the bill of complaint, it is further ordered, adjudged, and decreed that the decree in said equity cause No. 3877, wherein said William E. Clark is complainant, & said Mary Margaret Schlorb, John G. Killian, and others, are defendants, passed on the 17th of February, A. D. 1875, declaring certain conveyances of lots (1) and three (3) and the north half ($\frac{1}{2}$) of lot seven (7) to John Killian, in
87 trust for said Mary Margaret Schlorb, mentioned in said bill of complaint, in said equity cause No. 3877, null and void, be and the same is hereby affirmed; and further it is ordered, adjudged, and decreed that the decree passed in said equity cause No. 3877, on the 18th day of June, A. D. 1875, declaring certain deeds of conveyances of lots five (5), six (6), eight (8), and nine (9) in square No. 654 to John Killiain, in trust for the use of said Mary Margaret Schlorb, wife of William Schlorb, and the conveyance of lot two (2) in said square No. 654, to George L. Schlorb, to be null and void, be and the same is hereby reversed and set aside; and further it is ordered, adjudged, & decreed *and decreed* that the sales made by virtue of the said decree as to said lots two, five, six, eight, and nine, be and the same are hereby declared null and void, and the same are hereby set aside; and further that all deeds of conveyances made by virtue of any decree in said equity cause No. 3877 of said lots two, five, six, eight, and nine, be and the same are hereby cancelled and declared null and void; and further that said Francis Miller, trustee under the said decree of the 18th day of
88 June, A. D. 1875, be and he is hereby restrained and prohibited from executing and delivering any deed or deeds of said lots two, five, six, eight, and nine to the purchaser or purchasers thereof; and further that all decrees ratifying said sale or sales of said lots two, five, six, eight, and nine, be and the same are hereby reversed and set aside; and it appearing to the satisfaction of the court that out of the proceeds of the sale of said lots two, five, six, eight, and nine, the sum of one hundred and fifty-six $\frac{17}{100}$ dollars was paid as taxes on said lots, and the further sum of two hundred and thirteen $\frac{85}{100}$ dollars was allowed and paid as widow's dower to said Mary Margaret Schlorb, judgment creditors. It is therefore further ordered, adjudged, and decreed that said complainants pay or cause to be paid to said Francis Miller, trustee in said equity cause No. 3877, within five months the said taxes and dower, amounting to the sum of three hundred and seventy $\frac{17}{100}$ dollars, with interest from the date of this decree, who is hereby ordered and

directed to distribute and pay the same to the parties entitled thereto, and further that said sum of three hundred and seventy $\frac{47}{100}$
89 dollars be and the same is hereby declared a lien on said real estate, and said defendant to pay costs of this cause.

D. K. CARTTER,
Ch'f Justice.

90 *Defendants' appeal to Sup. Court U. S.—Filed May* 20, 1878.

In the supreme court of the District of Columbia.

KILLIAN ET AL. *vs.* CLARK ET AL. } Equity. No. 5322.

The defendants in open court pray an appeal to the Supreme Court of the United States from so much of the decree this day passed herein as reverses and sets aside the decree passed in said equity cause No. 3877, on the 18th day of June, 1875, and declares the sales made under said last mentioned decree, and the conveyances thereunder, null and void.

FRANCIS MILLER,
Sol'r for Defendants.

91 *Complainants' appeal to Sup. Court U. S.—Filed May* 22, 1878.

In the supreme court of the District of Columbia, in general term, A. D. 1878.

MARY MARGARET SCHLORB ET AL., COMplainants, *vs.* WILLIAM E. CLARK, DEFENDANT. } In equity. No. 5322.

Now come the complainants in open court and pray and appeal to the Supreme Court of the United States from so much of the decree passed in this cause on the 20th day of May, A. D. 1878, as affirms the decree passed in equity cause 3877, on the 17th day of February, A. D. 1875, as to said lots one, three, and the half of lot seven, in this cause described. And also prays an appeal to said Supreme Court of the United States from so much of said decree of said 20th day of May, A. D. 1878, as orders said complainant to pay to said Francis Miller, trustee, $370\frac{47}{100}$, and makes said sum a lien on said real estate.

W. J. MILLER,
Sol'r for Comp'ts.

92 AUTHENTICATION OF RECORD.

Clerk's certificate.

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of, originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 9th day of October, 1878.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.
Witness my hand and seal this 9th day of Oct., 1878.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.
Witness my hand and the seal of said court this 9th day of October 1878.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

(Indorsement on cover:) No. 264. William E. Clark, app't, vs. John George Killian, adm'r, &c., of William Schlorb, dec'd, Mary Margaret Schlorb, et al. Dist. of Columbia sup. court. Filed 14th October, 1878.

ADDITION TO RECORD No. 264.

1 In the Supreme Court of the United States, No. 264, Oct. term, 1880.

WILLIAM E. CLARK, APPELLANT,
vs.
JOHN GEORGE KILLIAN, ADMINISTRATOR DE-bonis non of William Schlorb, deceased; Mary Margaret Schlorb, Emma Schlorb, Whilimina Schlorb, Kate Schlorb, George L. Schlorb, and John Schlorb, appellees. } In equity. No. 5322.

Whereas, in making up the record in the above-entitled cause, now pending in the Supreme Court of the United States, on appeal from the supreme court of the District of Columbia, many errors and ommissions appear;

And whereas the parties to said cause are desirous to correct said record as to said errors and omissions, do hereby stipulate and agree, by and through their respective attorneys of record, that said errors and omissions be and stand corrected as follows, in said printed record (which shall stand as corrections of the record sent up by the clerk of the supreme court of the District of Columbia), to wit:

2 1st. Whenever the word line is used herein, shall mean from top of page of said printed record.

2d. On 3d page strike out the letters "hin," and insert the word "hinder," in 11th line.

3d. On said 3d page, in 38 line, strike out the word "to" and insert "by."

4th. On 5th page, in 31st line, strike out the word "Execution" and insert "Exertion."

5th. On 6th page, in 37th line, strike out the word "Court" and insert "Cause."

6th. On 7th page, in 2d line, strike out the word rendered and insert recorded.

7th. On same page, in 21st line, strike out the word "let" and insert "Set."

8th. On same page, in 26th line, strike out the word "Application" and insert "Replication."

9th. On 9th page, in 24th line, strike out the word "Recorded" and insert "Rendered."

3 10th. On 10th page, in 27th line, strike out the word "here" and insert "leave."

11th. On same page, in 30th line, strike out the word "how."

12th. On same page, in 36th line, strike out the word "Your" and insert "Said."

13. On 11th page, in 3d line, between the words "Indebted to" and the word "other," insert the word "No."

14th. On the same page, in 39th line, strike out the words "did institute" and insert "died intestate."

15th. On 13th page, wherever the word "Council" appears, strike out and insert the word "Counsel."

16th. On 15th page, in the agreement as to Exhibits M & M, strike out the word "heard" and insert "read."

It is also hereby stipulated and agreed that to said Exhibits M & M, Nos. 1, 2, 3, 4, 5, & 6, the certificates of the clerk of the late circuit court of the District of Columbia, and of the recorder or register of deeds of the said District (which have been omitted from said record), should appear as follows, to wit:

4 1st. After said Exhibit M & M No. 1, on page 17, it should appear that said exhibit was

"Received 11 August, 1858, to be recorded, and the same was recorded in Liber J. A. S., No. 159, folio 303 & 304, one of the land records for Washington County, in the District of Columbia, and examined by Jno. A. Smith, clerk."

2d. After said Exhibit M & M No. 2, on page 19, it should appear that said exhibit was

"Received 2d November, 1858, to be recorded, and the same day was recorded in Liber J. A. S., No. 159, folio 413, 414, 415, & 416, one of the land records for Washington County, District of Columbia, and examined by Jno. A. Smith, clerk."

3d. After said Exhibit M & M No. 3, on page 20, it should appear that said exhibit was

"Received 24 December, 1868, recorded in Liber D., No. 4. folio 421, of the land records of Washington Co., D. C., examined by F. P. Cuppy, register."

4th. After said Exhibit M & M No. 4, on page 22, it should appear that said exhibit was

* * * * * * *

5 "Received for record 27th November, 1865, R. M. Hall, reg., recorded January 13, 1866, in the land records for Washington County, District of Columbia, Liber R. M. H., No. 4, folio 236, 237, & 238, and examined by R. M. Hall, reg."

5th. After said Exhibit M & M No. 5, on page 23, it should appear said exhibit was

"Received for record 27 December, 1865, R. M. Hall, reg., recorded February 27th, 1866, in Liber R. M. H., No. 14, folio 62 & 63, one of the land records for Washington County, D. C., examined by R. M. Hall, reg."

6th. After said Exhibit M & M No. 6, on page 24, it should appear said exhibit was

"Received for record May 3, 1866, and recorded in Liber R. M. H., No. 15, folio 347, &c., one of the land records for Washington County, D. C., and examined by R. M. Hall, register."

On page 25, in the 2d line of the decree, after the word "Equity" insert "court."

On same page, in said decree, strike out the word "Counselled" and insert "Considered."

On page 26, in the appeal of appellees, in the first line, strike
6 out the word "and" and insert the word "an."

Supreme court of the District of Columbia, 20th day of May, 1878.

KILLIAN ET AL. vs. CLARK ET AL. } Equity. No. 5322.

The defendant in open court pray an appeal to the Supreme Court of the United States from so much of the decree this day passed herein as

reverses and sets aside the decree passed in said equity cause No. 3877, on the 18th day of June, 1875, and declares the sales made under said last-mentioned decree and the conveyances thereunder null and void.

FRANCIS MILLER,
Sol'r for Defendants.

And the said appeal is here now by the court allowed. (3d minutes, page 187.)

Supreme court of the District of Columbia, 21st May, 1878.

MARY MARGARET SCHLORB ET AL., complainants,
vs.
WILLIAM E. CLARK, DEFENDANT.
} In equity. No. 5322.

7 The complainants in open court pray an appeal to the Supreme Court of the United States from so much of the decree passed in this cause on the 20th of May, 1878, as affirms the decree passed in equity cause 3877, on the 17th day of February, 1875, as to said lots one and three, and the north half of lot seven, in this cause described; and also pray an appeal to said Supreme Court of the United States from so much of said decree of said 20th day of May, 1878, as orders said complainants to pay to said Francis Miller, trustee, $370.47, and makes said sum a lien on said real estate. Appeal allowed.

Penalty of appeal bond to be $1,000. (3d minutes, page 188.)

FRANCIS MILLER,
Counsel for Appellants.
W. J. MILLER,
Counsel for Appellees.

It is hereby further stipulated and agreed by the parties to the above-entitled cause of Killian, Schlorb, et al. vs. Clark, that on the 22d
8 day of April, A. D. 1878, the supreme court of the District of Columbia, in general term, adopted and passed the following rule, to wit:

"*Bill of review; time of filing.*

"No bill of review shall be filed, but within two years after the entry of the decree or order, with the exception specified in proviso to section 1008 of the Revised Statutes of the United States." (3d minutes, page 164.)

This rule was adopted at the time the decision was rendered in this cause and before the decree was prepared & signed, and the following the rule of the supreme court of the District of Columbia:

"No order, judgment, or decree of any of the courts held by a single justice of this court shall be reviewed in the general term, unless the appeal be taken & perfected within thirty days after the order, judgment, or decree complained of shall have been made or pronounced."

FRANCIS MILLER,
Counsel for Appellants.
W. J. MILLER,
Counsel for Appellees.

(Indorsed:) Supreme Court U. S. 1880. October term. No. 264. Wm. E. Clark et al., appellants, vs. John G. Killian, adm'r. Stipulation of counsel correcting record. Filed 17 January, 1881.

Supreme Court of the United States.

No. 264.

WILLIAM E. CLARK, Appellant,

vs.

JOHN GEORGE KILLIAN, Administrator, &c., of William Schlorb, deceased, Mary Margaret Schlorb, et als.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR THE APPELLANT.

FRANCIS MILLER,
Solicitor for Appellant.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1881.

In the Supreme Court of the United States.

Appeal from the Supreme Court of the District of Columbia.

WILLIAM E. CLARK

vs.

JOHN GEORGE KILLIAN, Administrator, &c., of William Schlorb, Deceased, Mary Margaret Schlorb, *et als.*

BRIEF FOR APPELLANT.

William Schlorb, on whose estate the complainant is administrator, was a butcher doing business in the city of Washington. It appears from the record that at various times, extending from 1858 to 1868, he purchased several pieces of property all lying in square No. 654, and as fast as he purchased them he either conveyed them himself or caused the vendors to convey them to one Killian in trust for his wife. He also conveyed all his personal property to the said Killian in trust for his wife. While he was thus transferring all his property, personal and real, to his wife, he continued in the use and occupation of the whole of it, and continued to carry on his business as a butcher by means

of it. In the course of this business he became largely indebted to the defendant Clark for hogs sold to him to enable him to carry it on. Clark brought suit against Schlorb, and after his death recovered judgment against his administrator, upon which *fi. fa.* was issued and returned *nulla bona*. A creditor's bill was then filed, and, upon hearing, the special term for equity business passed two decrees, dated February 17, 1875, and June 18, 1875, declaring the several conveyances in trust for the widow, Margaret Schlorb, null and void, and ordering the property covered by said conveyances to be sold to satisfy the above-mentioned judgment. The sales were duly reported to and confirmed by the court.

No appeal was taken from these decrees to the general term, but on January 4th, 1877, nearly two years after the first decree and more than eighteen months after the second, the complainant filed an original bill to set aside the decrees above referred to. In the meanwhile one Schneider, by Wm. John Miller, his solicitor, filed a creditor's bill against Margaret Schlorb and the trustee for the sale of the above property, to subject her dower interest in the hands of the trustee to the payment of his claim, and by a decree of the Supreme Court of the District the trustee was ordered to pay over her said interest to said W. J. Miller in satisfaction of the claim of said Schneider, which was done.

On hearing in general term, the decree of February 17th, 1875, directing the sale of lots 1 and 3 and the north-half of lot 7 in square 654, was affirmed, and from this part of the decree of said general term the complainants in the bill of review appeal. But the lots, as appears from the record, (p. 7,) were sold for the aggregate sum of $1,403.47, and there is no other proof of the value of said lot, and of course the amount involved is not sufficient to give them the right of appeal and their appeal must be dismissed. The second decree of the special term of June 18th, 1875, directing the

sale of lots 2, 5, 6, 8, and 9 in square 654, was reversed, and from that part of the decree the defendant Clark appealed. The amount due Clark at the time of the decree, charging him with the whole amount produced by the sale of the lots under the first decree, was over $3,100, which is above the amount that entitles him to an appeal.

The complainant alleges as error in the decrees attacked by the bill of review that the property subjected to the payment of the judgment of Clark was acquired before the indebtedness to Clark had accrued, and therefore could not be held liable for his claim. But Clark's dealings with Schlorb began in October, 1865, and lot 1 in square 654 was conveyed to Killian, trustee, in Dec., 1865; the north half of lot 7 in square 654, in May, 1866, and lot 3 in square 654, in Dec., 1868. These are the lots sold under the first decree, which sale was declared valid by the court below. The other lots and Schlorb's personal and mixed property, *constituting all he ever owned from* 1858 *to the time of his death*, was, as fast as he acquired it, conveyed to Killian in trust for his wife, and the question to be here determined is this: "*Can a man engaged in a large business, amounting as in this case to nearly* $100,000 *in three years, with one person, be permitted as fast as he obtains property to convey it to his wife, and thus retain for his own advantage all the results of his successful ventures, and throw all the risks upon those who do business with him?*"

Before entering into a discussion of the merits of this particular case there are some preliminary questions to be disposed of.

I.

Have not the complainants lost their right to file a bill of review by their delay?

"A bill of review for errors apparent upon the face of

the record will not lie after the time when the writ of error could be brought, for courts of equity govern themselves in this particular by the analogy of the common law in regard to writs of error."

Story's Eq. Pl., § 410.

Thomas *vs.* Harvies' heirs, 10 Wh., 146.

Smith *vs.* Clay, Ambler, 645.

In New York it is held that a bill of review cannot be brought after the time allowed by law for appealing from the decree.

Boyd *vs.* Vanderkemp, 1 Barb. Ch., 273.

The original suit in which the decrees sought to be set aside were rendered was never appealed to the general term. By rule 91 of the Supreme Court of the District of Columbia, "no order, judgment, or decree of any of the courts held by a single justice shall be reviewed in the general term, unless the appeal be taken and perfected within thirty days after the order, judgment, or decree complained of shall have been made or pronounced."

It is clear, therefore, that this bill was filed at too late a period to authorize this court to entertain it.

The court, in deciding this case, undertook to avoid this objection by announcing on the day of the delivery of its opinion a *new rule* of court allowing two years within which to file a bill of review, but it is submitted that that rule can have no retrospective action and can not apply to this case.

II.

The complainants seek to have these decrees set aside without having complied with and obeyed them.

The ordinances in chancery respecting bills of review established by Lord Bacon have never been departed from.

(Story's Eq. Pl., § 404.) By one of these ordinances it is declared that the decree must be first obeyed and performed before a bill of review can be brought; *as if it be for land, the possession must be given up;* if it be for money, the money must be paid; if for evidences, the evidences must be brought in; and so in other cases.

Story's Eq. Pl., § 406.

The italics are my own.

Now there is no averment in this bill of review that these complainants have given possession of the property in suit, but on the contrary it appears affirmatively that they are now holding it, and asking the aid of this court to enable them to resist a decree regularly made, unreversed, and unappealed from, and there has been no order of the court dispensing with this performance.

For these reasons the bill of review should have been dismissed.

ARGUMENT UPON THE MERITS.

But upon the merits the court cannot hesitate to sustain the decree below.

The right of a man to make provision for his wife proportioned to his means is not here contested, but it is denied that a conveyance to her or to her use of all he ever owned is a proper provision, and if such conveyance is not fraudulent in fact, it will be *conclusively* presumed to be fraudulent in law, as against creditors either antecedent or subsequent.

It is submitted that such conveyances are fraudulent as to a subsequent creditor, and in support of this view we refer to the following authorities:

"In respect also to gifts or grants of property by a husband to his wife after marriage, they are ordinarily (but not

universally) void at law. But courts of equity will uphold them in many cases where they would be held void at law; although, in other cases, the rule of law will be recognized and enforced. Thus, for example, if a husband should by deed *grant all his estate or property to his wife, the deed would be held inoperative in equity as it would be in law;* for it could in no just sense be deemed a reasonable provision for her, (which is all courts of equity hold the wife entitled to;) and, in giving her the whole, he would surrender all his own interests."

2 Story's Eq. Ju., § 1374.

Fonblanque says: "If a conveyance or gift be of the whole, or the greater part, of the grantor's property, such conveyance or gift would be fraudulent; *for no man can voluntarily divest himself of all, or the most of what he has, without being aware that future creditors will probably suffer by it.*"

Fonblanque's Eq., B. 1, ch. 4, § 12, note (*a.*)

"It is not necessary that a man should be actually indebted at the time he enters into a voluntary settlement, in order to have it held fraudulent; if he make such a settlement with a view to his becoming indebted, *or engaging in trade*, at a future time, it is equally a fraud, and ought to be set aside."

1 Vesey, Jr., Kidney *vs.* Coussmaker, 447, note 7
Higginbotham *vs.* Holme, 19 Vesey, Jr., 88.
See also
Stillman *vs.* Ashdown, 2 Atkyns,* 481.
Fitzer *vs.* Fitzer, 2 Atkyns,* 513
Beard *vs.* Beard, 3 Atkyns,* 72.
Atkinson *vs.* Phillips, 1 Md. Ch., 512.
Brinton *vs.* Hook, 3 Md. Ch., 480.

Kerr on Fraud, 199, 208, 385.
1 Story Eq. Jr., §§ 350, 352–7, 361, 363, 364, 369.
Hinde's Lessee *vs.* Longworth, 11 Wh., 199.
Solomon *vs.* Bennett, 1 Conn., 525, cited in Willard's Eq. J., 236.
Sexton *vs.* Wheaton, 8 Wheaton, 246–7.

All the circumstances connected with these conveyances give proof of their fraudulent character. In the conveyance of lots 6 and 9 in square 654, and all his personal property in 1858, it is provided that if the said William Schlorb survived his wife, "the trustee is to hold the said trust property *to and for the use and benefit of said William during the time of his natural life.*"

Record, p. 16.

Lot No. 1 is to be free from all liability for the debts of said William, and free from his control or *that of any of his creditors.*

Record, p. 19.

And in all the deeds careful provision is made to protect all of the property, personal and real, from the demands of Schlorb's creditors. The reservation of a reversionary interest in the deed of lots 6 and 9 would of itself be so plain a badge of fraud that any creditor would have had a right to set that aside, if necessary to the payment of his debt.

Brinton *vs.* Hook, 3 Md. Ch., 480.
Sidensparker *vs.* Sidensparker, 52 Maine, 490.
Taylor *vs.* Jones, 2 Atkyns,* 600.

Lord Hardwicke says: "It is certain that every conveyance of the husband that is voluntary, and for his own benefit, is fraudulent against creditors."

Fitzer *vs.* Fitzer, 2 Atkyns, 513.

As to the defence attempted in the answer to the original bill, that a portion of the money used in the purchase of this property was earned by Margaret Schlorb, it is sufficient to say that all these transactions were before the passage of the married women's act, and the earnings of the wife then belonged to the husband.

In the 21st paragraph of the bill it is assigned as error that the heirs of John Killian, trustee for Margaret Schlorb, are not made parties. But, in the first place, it does not appear from the face of the record in the original cause that John Killian had any heirs, and "the rule in regard to bills of review is that you cannot look into the evidence of the case to show the decree to be erroneous in its statement of facts. This is the proper office of the court upon appeal. But, taking the facts as they are stated to be in the face of the decree," (or, in the United States, in the face of the record,) "you must show that the court has erred in point of law. If, therefore, the decree" (or the record) "do not contain a statement of the material facts on which the bill proceeds, it is plain there can be no relief by bill of review, but only by appeal to some superior tribunal."

Story's Eq. Pl., § 407.

Whiting *vs.* Bank of U. S., 13 Peters, 6.

And these ordinances still govern bills of review.

Massie *vs.* Graham, 3 McLean, 41.

Moreover, the heirs of Killian, if there are any, have no interest in the dry trust which their father is claimed to have had in these fraudulent conveyances, and they are not necessary parties to the bill. But if they were necessary parties, the defendants to the original bill, not having by plea or answer taken the objection, specifying by name or description the parties to whom the objection applies, even if the

objection had been made at the hearing, could not have prevented the entering of the decree.

39th Equity Rule, S. C. D. C.

Even if they had been made parties, they need not have appeared or answered, because no relief could have been asked as to them.

40th Equity Rule, S. C. D. C.

It is evident, therefore, that the omission of the heirs of Killian in any event is a mere *formal* omission, and "error in matter of form only, though apparent on the face of a decree, seems not to have been considered as a sufficient ground for reversing the decree. And matter of abatement has also been treated as not capable of being shown for error to reverse a decree."

St. Eq. Pl., § 411.

FRANCIS MILLER,
Attorney for Appellant.

[illegible] Court of the United States.

OCTOBER TERM, 1900.

No. 264.

WILLIAM E. CLARK, Appellant,

vs.

JOHN GEORGE KILLIAN, Administrator, &c., of WILLIAM SCHLOBB, Deceased, MARY MARGARET SCHLOBB, GEORGE L. SCHLOBB et al., Appellees.

ASSIGNMENT OF ERRORS.

BRIEF AND ARGUMENT ON BEHALF OF APPELLANT.

[illegible]
Solicitor for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 264.

WILLIAM E. CLARK, APPELLANT,

vs.

JOHN GEORGE KILLIAN, ADMINISTRATOR, &c., OF WILLIAM SCHLORB, DECEASED, MARY MARGARET SCHLORB, GEORGE L. SCHLORB *et al.*, APPELLEES.

BRIEF AND ARGUMENT ON BEHALF OF APPELLEES.

This suit was brought by a bill of review in the court below to have two decrees, which were signed and enrolled in equity cause No. 3877 in the Supreme Court of the District of Columbia, wherein the appellant, William E. Clark, is complainant, and the appellees, John George Killian, administrator *de bonis non* of William Schlorb, deceased, and Mary Margaret Schlorb and others, are defendants, reviewed and reversed on the ground of manifest errors in the two decrees.

A brief Statement of Case is as follows:

It appears that William Schlorb was a man of means, and conveyed and caused to be conveyed, in 1858, lots 5, 6, 8 and 9 in square 654 to John Killian in trust for his wife, Mary Margaret Schlorb, and also on 5th October, 1865, he

caused to be conveyed to his son, George L. Schlorb, lot 2 in said square.

That on or about the 21st December, 1865, Mr. Schlorb caused lot 3 in said square to be conveyed to John Killian in trust for his wife, Mary M. Schlorb, and on 3d day of May, 1866, caused north half of lot 7 in said square to be conveyed to said Killian in trust for said Mary M. Schlorb, and on 23d December, 1868, he also caused lot 1 in said square to be conveyed to said Killian in and upon the same trust.

On 22d November, 1865, Schlorb commenced to deal with Clark, and their daily transactions ran from $275 to $1,600 a day for the period of 2 years and 11 months, amounting to $99,502.83, and during the same period of time Schlorb paid Clark $95,683.58.

That a controversy arose between Clark and Schlorb as to their transactions. That Clark, on or about May 12, 1869, instituted suit against Schlorb. That Schlorb died about December 13, 1871. John Killian was appointed administrator, and was made party to said suit; and on June 26, 1873, judgment was obtained against the administrator, on verdict of jury in favor of Clark, for $3,819.75. That afterwards John Killian died, and J. George Killian was appointed administrator *de bonis non*. Afterwards Clark filed his creditor's bill in equity against John George Killian, administrator *de bonis non*, Mary Margaret Schlorb, as widow of William Schlorb, and also made William Schlorb's children party defendants, charging that the conveyances of lots 5, 6, 8, and 9 in square 654 made in 1858 to John Killian, his heirs and assigns, in trust for Mary M. Schlorb, (wife of William Schlorb,) were made, and caused to be made, by William Schlorb to defraud creditors of him, William Schlorb; and also charges, on advice, that the deeds of conveyances of December 21, 1865, of lot 3 in square 654, of May 3, 1866, of the north half of lot 7 in square 654, and on December 23, 1868, of lot 1 in said square, to said John Killian, his heirs and assigns, in trust for said Mary M. Schlorb, were fraudulent and void as to creditors; and also charges that, on 5th October, 1865, William Schlorb purchased from Baker lot 2 in square 654, and, with a view to hinder, delay, and defraud creditors, caused the property to be conveyed to George L. Schlorb, son of said William. Prayed the several deeds to John

Killian, trustee, and George L. Schlorb be declared null and void as to complainant, Clark, or other creditors of William Schlorb, and a trustee be appointed to sell the property to pay Clark's judgment. Mrs. Schlorb, by her answer to the bill, denied each and every allegation charging fraud upon herself and her deceased husband in reference to the property described in the bill, and stated the greater portion of the property was conveyed in 1858, about eight years before any dealing took place between her deceased husband and Clark, and when her husband was free from debt and in comfortable circumstances and engaged in prosperous business. That the only piece of property conveyed in trust for her by her husband was one lot in 1868, after the dealing between her husband and Clark commenced, and that at the time of conveyance of the last mentioned piece of property, upon a settlement of accounts between her husband and Clark, no balance would have been found due Clark; that said indebtedness between her husband and Clark arose sometime subsequent to said last transfer, and shortly before the death of her husband. That in reference to said lot 2, it was conveyed to George L. Schlorb at least a year before the dealings commenced between her husband and Clark, and Clark could not have trusted her husband on account of said lot, it never having been in her husband's name upon the land records.

That all the property mentioned by Clark, with a single exception of one lot, was transfered to John Killian, trustee, for the benefit of herself, many years before any transaction took place between Clark and her husband, and *no credit* could have been given her husband on account of said lot, and she denies all allegations as to fraud, and says, a large portion of the purchase money of the property was paid by her, being the result of her individual labor and exertions, and that Clark is the only person who claims a debt due from her husband.

The infant defendants merely filed the usual answer, submitting their rights to the protection of the court.

J. George Killian, administrator *de bonis non*, in his answer says, he knows nothing in relation to the property and real estate conveyed to John Killian, trustee, for the benefit of Mrs. Schlorb, except the fact of the deeds conveying the property being recorded among the land records of the District of Columbia, and that at the time of such transfers

of said real estate Mr. Schlorb was engaged in a prosperous business, was entirely responsible, and said deeds were not made with any intent or design to defraud any of his (Schlorb's) creditors much less Clark, with whom he (Schlorb) at that time had not commenced to deal.

The cause was heard on bill and answers on the 17th February, 1875—the chancellor decreed the conveyances of said lots 1, 3, and north half of 7 to said John Killian in trust for Mrs. Schlorb, null and void, and decreed a sale of the same to pay Clark's judgment. On 18th June, 1875, the chancellor, on further hearing of the cause passed a second decree decreeing the conveyances of said lots 5, 6, 8 and 9 to John Killian, in trust for said Mrs. Schlorb, and the conveyance of said lot 2 to George L. Schlorb, null and void, and decreed a sale of the same to satisfy Clark's judgment. On the 4th January, 1877, Mrs. Schlorb, and the other defendants in Clark's bill filled their bill of *Review*, setting forth Clark's bill and the answers, and claiming there were errors in the several decrees which declared the several conveyances above mentioned as null and void and decreeing a sale of the same.

To the bill of review Clark demurred, and on hearing of the demurrer, the chancellor sustained the demurrer, and dismissed the bill of review, and from this decree sustaining the demurrer and dismissing the bill of review, Mrs. Schlorb and the other complainants in the bill of review, appealed to the court in general term of the District of Columbia, which reversed the decree sustaining the demurrer and and dismissing the bill of review and made the decree contained in *record page* 25, and from this latter decree both appellant Clark and appellees, the Schlorbs and Killian, have appealed to the court.

THE ASSIGNMENT OF ERRORS CLAIMED BY APPELLANT ARE:

1st. That the bill of review was not filed within twenty days after the decrees in SPECIAL TERM had been signed and enrolled in equity cause 3877.

2d. That so much of the decree of the 20th May, 1878 (see record page 25) as reverses and sets aside the decree passed in equity cause No. 3877 on the 18th day of June, 1875, and declared the sales made under said decree and the conveyances thereunder, null and void—was erroneous.

THE APPELLEES CONTEND:

1st. That said bill of review was filed within time.

2d. That the court did not err in reversing so much of the decree set forth by appellant.

THE APPELLEES ALSO ASSIGN FOR ERROR ON THEIR BEHALF:

1st. That so much of the decree of the court (see record 25) as affirmed the decree of the 17th day of February, 1875, as to lots 1, 3 and north half of 7, is erroneous.

2d. That the John Killian heirs should have been made party defendant to Clark's bill in equity 3877.

BRIEF.

The first question raised:

It is contended on behalf of Clark that the appeal of Killian *et al.* from the decree below must be dismissed for want of jurisdiction, the amount appealed from being too small, but his (Clark's) appeal bringing the case clearly within the jurisdiction of this court as to the amount involved, it is manifest that any error shown to exist in the decree below, and regularly appealed from by either party, is fairly and properly before this court for consideration and decision.

The second question on this appeal is, as to the time of filing bill of review.

THE APPELLEES CONTEND:

1st. The demurrer does not raise the question.
Record, page 14.

2d. The bill of review was filed in time: Because in the supreme court of the District of Columbia there was no rule of practice or limitation of time within which to file a bill of review.

There is no law of Congress or otherwise as to the supreme court of the District of Columbia regulating bills of review.

It is true, as claimed by appellant, that the supreme court of the District of Columbia in general term had the power to adopt such rules to regulate the time and manner of making appeals from the special term to the general term, &c.; and although it adopted a rule that "*no order, judgment, or decree of the court held by a single justice of the court shall be reviewed in the general term unless the appeal be taken and perfected within 30 days after the order, judgment, or decree complained of shall have been pronounced;*" yet the court was wholly silent on the question of bills of review. And it was not until the hearing of this cause in general term a rule was adopted by the court that "*no bill of review shall be* filed, but within two years after the entry of the decree or order, &c.," thereby showing there was merit in appellees' cause, and they did not consider the *appeal rule* applicable to the case, but did consider a *bill of review* was analogous to a writ of *error or appeal* referred to in section 1008 of the Revised Statutes of the United States and applicable to the supreme court of the District of Columbia.

The supreme court of the District of Columbia is a United States court and possesses the same powers and exercises the same jurisdiction as the circuit courts of the United States.

Const. U. S., art. 1, sec. 8, par. 10.
Const. U. S., art. 3, sec. 1.
Secs. 750 and 760 Rev. Stat. of D. C.

If then it be true, that the Supreme Court is a court of the United States, and finding no law of Congress regulating (at the time, January 4, 1878) filing of bills of review, we must look at the decision of this court, to see the time and manner of filing bills of review in the courts of the United States, and apply the same to this cause. Hence appellee's claim.

1st. A bill of review is the proper remedy after a decree has been signed and enrolled.

Whitney *vs.* Bank U. S., 13 Peters, 6, 13.
Story's Equity Pleadings, sec. 21, 403, 405.
Kennedy *vs.* Bank of Georgia, 5 Howard, 610.

The first decree in this cause was signed and enrolled on

the 17th of February, 1875, and the second decree on the 18th of June, 1875.

Record p. 7, sec. 10.
Record p. 7, sec. 12.

The bill of review was filed the 4th of January, 1877.
Record p. 1.

2d. The bill of review was filed within two years, and is therefore within time.

Thomas *vs.* Harvie Heirs, 10 Wheat., 147.
Whitney *vs.* Bank U. S., 13 Peters, 6–13.

Again it has been held that—

1st. When a bill of review is demurred to, all the facts, including recitals in the bill, are admitted.

Caterall *vs.* Purchase, 1 Atk., 290.

2d. The bill of review sets forth all that is alleged in bill and in the answers. It sets forth the decrees and the errors relied on—this is sufficient; and to see if there be errors, the *court will* look into the bill, answers and other proceedings.

Whitney *vs.* Bank U. S., 13 Peters, 6, 13, 14.
Hollingsworth *vs.* McDonald, 2 Har. & John, 230.

Hence, the appellees claim and contend that the bill of review was filed within time and that the decrees of 17th February and 18th of June, 1875, which had been signed and enrolled, declaring the deeds of conveyances null and void as to creditors, were not warranted by the allegations of Clark's bill, and the answers thereto, and a bill of review is a proper remedy.

Goodhove *vs.* Churchman, 1 Barb., chap. 596.

If then the bill of review be the proper remedy in this cause, and if it was filed in time, then the errors assigned by the appellant and appellees (as to the decree 20th of May, 1878, Record p. 25) which are set forth in the appeals of appellant and appellees, (Record p. 26 and Stipulations,) may be argued together.

1st. It is shown by Clark's bill, that Clark commenced to have business transactions with William Schlorb on 22d of November, 1865; that Schlorb being indebted to Clark,

Clark on the 26th of June, 1873, recovered judgment at law against Wm. Schlorb for $3,819.25.

Record p. 3, sec. 9.

Again Clark in said section 9 refers to and makes part of his bill the proceedings at law; and on reference to them it appears the daily business transactions between Clark and Schlorb was from $275 to $1,600, and that from the 22d of November, 1865, to 22d of October, 1868, to wit: two years and eleven months the business transactions between them amounted to $99,502.83, and that Schlorb paid him during the same period $95,683.58.

Record p. 9, sec. 4.

It is shown that said lots 5, 6, 8 and 9 were conveyed to Killian, trustee, in trust for Mrs. Schlorb in August and October, 1858, and the deeds of conveyance recorded among the land records in the same months, at least *seven years prior* to any transactions between Clark and Schlorb.

Record p. 2, secs. 2 and 3.

Record p. 4, secs. 2 and 4.

Record pp. 16 and 17. Exhibits M and M, Nos. 1 and 2.

Stipulations of Parties, Record p. .

Hence it will be seen Clark never could have credited Schlorb on account of these lots.

2d. As to the conveyances of lot 3, made 23d of December, 1865, lot north part of 7 made 3d of May, 1866, and lot 1 made 23d of December, 1868, (see Exhibits M and M, No. 5, Record p. 22; Exhibit M M, No. 6, Record p. 23, and Exhibit M and M, No. 3, Record p. 19.) Schlorb was a prosperous business man, as a butcher in the city market. It is shown that during those years he did a business with Clark of nearly $100,000, and he paid Clark during these years over $95,000.

See Record p. 4 and 5, secs. 2, 4 and 8.

Hence it will be seen that the conveyance of those lots 1, 3 and north half of 7, were not conveyed with intent to delay, hinder or defraud creditors, because Schlorb was not indebted to Clark at the time, and this is shown by Mrs. Schlorb's answer, and no evidence is offered by Clark to the contrary.

The court will take notice of the location and value of the property so conveyed to ascertain if the conveyances were unreasonable provision for a wife and her children.

This property is located near the brick-yards in the south-east part of the city, east of the arsenal, and sold (with lot 2 hereinafter mentioned) only for enough to pay Clark's judgment and expenses together with taxes, $156.59; left the widow Schlorb only $213.85 as dower.

See Record, p. 5, sec. 6.
See Record, p. 25—the decree.

3d. Clark's bill charges that the conveyance of lot 2 in said square 654 to George L. Schlorb, a son of said William Schlorb, was fraudulent and void as to him Clark. It appears that said lot 2 was never in William Schlorb—it was conveyed on 5th October, 1865, to George L. Schlorb by Henry J. Baker at least eight weeks before any transactions between Schlorb and Clark; and was recorded in the land records 27th November, 1865. Hence Clark could not have credited Schlorb on the faith of this piece of property.

Record, p. 5, sec. 3.
Record, pp. 20, 21 and 22. Exhibit M and M, No. 4.
See stipulations, record page ——

4th. Again, it does not appear in Clark's bill, that Clark or any other person was a creditor of William Schlorb between the years 1858 and 1869 or 1870, nor is it alleged in Clark's bill that Schlorb was indebted to him or any one else at the date of the execution or recording of the deeds of conveyance to Killian in trust for Mrs. Schlorb or to George L. Schlorb, son of William.

5th. Nor does Clark even attempt to prove that William Schlorb was indebted to him or any one else at date of the conveyance or the recording thereof, but, on the contrary, Clark shows that lots 5, 6, 8 and 9 were conveyed to Killian as trustee, at least seven years before he commenced to deal with Schlorb; and lot 2 was conveyed to George L. Schlorb by Baker at least eight weeks before any dealings took place between Clark and Schlorb; and further Clark shows, that none of the last-mentioned lots were ever in William Schlorb's name from 1858. True, Clark says, he is advised that said several transfers of property were fraudulent and void as to him, Clark and other creditors.

Record, p. 3, sec. 11.

6th. Yet, Clark does not prove any fraudulent transfers, nor does he prove Schlorb was indebted to him at the time of conveyance of lots 1, 2, 3, 5, 6, 8, 9, and north half of lot 7.

Mrs. Schlorb, in her answer, (Record, p. 4, sec. 2,) denies the charges of fraud, and says, the transfers of a greater portion of the property were made and completed in 1858, about eight years before any dealings with Clark and when her husband was free from debt and in comfortable circumstances. And again she says, (Record, p. 5, sec. 6,) that a large portion of the purchase money of the property described in the bill was paid by her, being the result of her own individual labor and exertions, and apart from anything received from her husband.

7th. This is not denied. Clark set the cause for hearing on the bill and answers.

Upon this state of facts appellees claim:

The answer being responsive to Clark's bill, and no evidence having been offered by Clark to contradict the answers, the chancellor should have dismissed bill in equity cause 3877.

Because,

1st. It is a well settled rule, that when a subsequent creditor depends upon the existence of prior debts to vacate deeds on ground of fraud, he must allege and prove such debts.

Lust *vs.* Wilkinson, 5 Vesey, 387.
Holloway *vs.* Millard, 4 Madd., 229.
Kidney *vs.* Coussmaker, 12 Vesey, 155.

2d. Subsequent creditors cannot question a voluntary or fraudulent conveyance of property by their debtor, which was not a fraud against them.

Graham *et al. vs.* La Crosse & Milwaukee R. R. Co. *et al.*
Sup. Court, October Term, 1880, No. 33.

3d. There is no allegation of indebtedness at time of conveyances, and no proof any indebtedness existed at the time, either to Clark or any one else. Subsequent indebtedness is not sufficient to make a transfer fraudulent.

Graham *et al. vs.* La Crosse *et al.* R. R., S. Court, Oct. Term, 1880.
Lyman *vs.* Cessford, 14 Iowa, 229.
Snyder *vs.* Christ, 39 Penn., 499.

4th. The fact of an indebtedness to a small amount, the grantor being in prosperous circumstances, and the gift a reasonable provision for a wife or child, will not render the deed fraudulent.

Hines' Lessees *vs.* Longworth, 11 Wheaton, 199.
Seaton *vs.* Wheaton, 8 Wheaton, 229.

5th. Again, there must be, at the time of such conveyances, a fraudulent intent—this must be clearly shown, or that an indebtedness existed at the time.

Seaton *vs.* Wheaton, 8 Wheaton, 229.
Worthington *vs.* Shipley, 5 Gill, 449.
Hamilton *vs.* Greenwood, 1 Bay., 178.
Atkinson *vs.* Phillips, 1 Md. Ch., 507.

6th. Again, registration of the deeds was notice to Clark. He could not have been deceived.

4th Stat. at Large, p. 520.
Seaton *vs.* Wheaton, 8 Wheat., 229.
Bump. on Fraud. Con. 161.
Sinler *vs.* Turner, 10 Iowa, 517.
Stewart *vs.* Thomas, 35 Mo., 202.
Bar *vs.* Hatch, 8 Ohio, 527.
Smith *vs.* Lowell, 6 N. H., 67.

7th. The deeds were recorded in the Recorder of Deeds office of the District of Columbia, as follows, to wit: as to lots 5, 6, 8 and 9, on 11th August and 2d November, 1858. As to lot 2, on the 27th November, 1865, and as to lot 3, on 27th December, 1865, and as to north half lot 7, on 3 May, 1866, and as to lot 1, on 24th December, 1868.

See Exhibits M & M, 1, 2, 3, 4, 5 and 6, p. 16 to 24 inclusive.

See Stipulations of Counsel attached to record p. ——

Lot 2 was never in William Schlorb's name on the record.

It was claimed by Clark, that a transfer of all the property a man has, is a badge of fraud. This will not apply where there are several distinct transfers not so closely connected as to constitute one transaction.

Preston *vs.* Gaffin, 1 Conn., 393.
Scott *vs.* Winship, 20 Geo., 439.

AS TO THE SECOND ASSIGNMENT OF ERROR OF APPELLEES.

They claim the legal title to lots 1, 3, 5, 6, 8, 9, and north half 7 was in John Killian, his heirs and assigns, in and upon certain trusts, as shown by Clark's bill, (record pages 1, 2, 3 and 4) and that prior to the filing of his bill of complaint, John Killian, trustee, was dead. (Record page 2, secs. 1 and 2.) Yet Clark did not make the Killian heirs party defendants in this bill. He should have done so. Not having done so, the decrees declaring the deeds fraudulent and void, were and are erroneous.

O'Hare *vs.* McConnell, 3 Otto, 153.

THE APPELLEES RESPECTFULLY SUBMIT:

1st. That *so much of the decree* of the *Court in General Term* (p. 25 of the Record) *reversing* the decree of the chancellor sustaining the demurrer to the bill of review and dismissing the bill, should be affirmed.

2d. That so much of the said decree of the *Court in General Term* as *reverses* the decree of the chancellor declaring the deeds of conveyances as to said lots 2, 5, 6, 8 and 9 as fraudulent and void, should be affirmed.

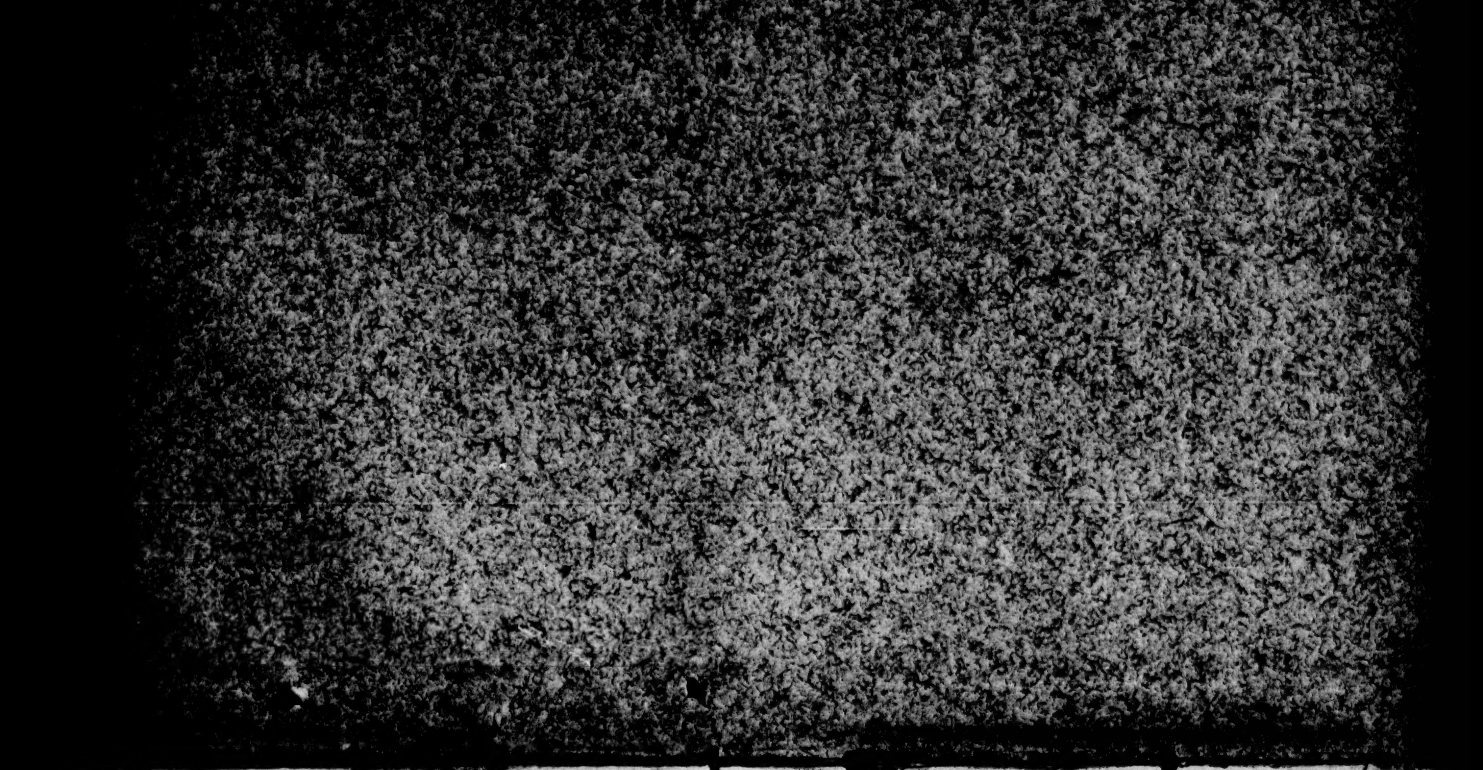
3d. We also claim and pray that the decrees of the chancellor declaring the deeds of conveyances of lots 1, 3, and north half of 7, as fraudulent and void, and so much of said decree of the General Term as affirms that decree, be reversed.

4th. It is shown by the bill of review, that said lots have been sold and conveyed under said decrees to said appellant.

Record p. 11, par. 20.

It is clearly shown and not disputed, that the decrees of the chancellor would take from Mrs. Schlorb and her orphan children all the property she and her children have out of which she could make a living for herself and children.

See Record, p. 5, sec. 6.

Respectfully submitted,

W. J. MILLER,
Counsel for Appellees.